



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Thursday the 11<sup>th</sup> day of November , 2021)

**APPEAL No.490/2019**

(Old No. ATA. 401(7) 2016)

Appellant M/s. Topsy Hotel and Restaurant,  
Ettumanoor,  
Ettumanoor P.O  
Kottayam– 686 631.

By Adv. Ashok B. Shenoy

Respondent The Assistant PF Commissioner  
EPFO, Thirunakkara,  
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 05/07/2021  
and this Tribunal-cum-Labour Court on 11/11/2021 passed the  
following:

**ORDER**

Present appeal is filed from order No. KR/ KTM /  
20411 / APFC / Penal Damage / 2014 / 18707 dt.19/02/2016

assessing damages U/s 14B of EPF & MP Act, 1952 ( hereinafter referred to as 'the Act'. ) for belated remittance of contribution for the period from 10/2000 to 03/2014 (remitted in between 07/2008 to 12/2014). The total damages assessed is Rs.1,20,627/-.

2. The appellant is a partnership firm running a bar attached hotel. The appellant establishment is covered under the provisions of the Act w.e.f 01/10/2000 vide a notice dt. 07/07/2008. The appellant had sought for waiver of the employees' share of contributions for the period from October 2000 to May 2008 in view of the retrospective coverage. The respondent initiated action U/s 7A to quantify the dues. The appellant had paid the employers' share of contribution for the subject period, during the course of 7A enquiry. Without considering, request for wavier thereof, the respondent issued an order assessing Rs. 2,57,426/- being the employees' share of contributions from October 2000 to May 2008. The

appellant preferred appeal before this Hon'ble Tribunal as ATA No. 83(7) 2010. Initially, the appeal was admitted directing appellant to deposit 40% of the assessed amount. The appellant remitted an amount of Rs.1,03,022/- being 40% of the assessed amount with the respondent vide order dt. 04/07/2011. The EPF Appellate Tribunal allowed the appeal and remanded the matter back to the respondent to assess the liability excluding employees' share of contribution for pre-discovery period. A true copy of the aforesaid order passed by the Hon'ble Tribunal is produced and marked as Annexure A1. Since the respondent failed to return the money as directed by the Tribunal, the appellant approached the Hon'ble High Court of Kerala in W.P.(C) No. 3435/2013. The Hon'ble High Court vide judgment dt. 06/02/2013 directed the respondent to finalise the proceedings and further that the amount, if any, found to have been paid in excess by the appellant, shall be directed to be refunded by the respondent. A copy of the

judgment of the Hon'ble High Court of Kerala is produced and marked as Annexure A2. Pursuant to Annexure A2 order, respondent passed a fresh order dt. 30/05/2013 finding that the appellant is not liable to pay any contribution for the period from October 2000 to August 2009, accepting the request of waiver of employees' share of contribution . True copy of the corrigendum letter dt. 28/05/2014 is produced and marked as Annexure A3. In terms of Annexure A3, the appellant refunded the amount along with a covering letter dt. 02/06/2014. A copy of the said letter is produced and marked as Annexure A4.

3. The appellant received notices dt.22/12/2014 and 07/01/2015 from the respondent proposing to impose damages U/s 14B of the said Act for the delayed remittance of contribution for the periods from 01/10/2000 to 22/12/2014 and 01/10/2000 to 22/12/2014 respectively. Summons dt. 07/01/2015 was annexed with 2 separate annexures, covering

different periods, with one covering the period from 15/03/2001 to 15/09/2009 and the 2<sup>nd</sup> one covering the period from 15/05/2001 to 15/05/2014. The appellant was also given a personal hearing on 07/04/2015. A representative of the appellant attended the hearing and filed a written submission dt. 07/04/2015 pointing out the multiple summons issued to them. It was also pointed out that payment of contribution by the appellant for the period from 01/10/2000 to 31/08/2009 was subject matter of dispute which culminated only on 28/05/2014 with Annexure A3 order. It is clear from the above order that the appellant has already remitted excess contribution to the tune of Rs.1,03,022/- and same was refunded to the appellant only in June 2014. From the above fact it is clear that there was no delay in payment of contribution for the said period. It was also contended that the appellant was suffering financial difficulties during the relevant point of time and the delay in payment of contribution was not deliberate. A true copy of the

letter dt.07/04/2015 submitted by the appellant is produced and marked Annexure A5. Ignoring the contentions of the appellant the respondent issued the impugned order which is produced and marked as Annexure A6. The impugned order is challenged by the appellant on the following grounds as well.

- 1) The respondent is not an officer authorized by the Central Government to exercise powers U/s 14B of the Act.
- 2) The appellant was not informed with due particulars or details to delay, rate of damages etc before passing Annexure A6 order.
- 3) The impugned order is a non-speaking order with no application of mind.
- 4) The respondent failed to consider the excess amount paid by the appellant and retained by them till 2014.

- 5) The respondent authority failed to consider the binding precedents of various high courts and the Hon'ble Supreme Court of India.
- 6) The respondent imposed damages on the appellant as a measure of penalty without applying his mind to the circumstance relevant to the case.
- 7) The respondent failed to see that there was no deliberate or intentional delay on the part of the appellant .
- 8) The respondent failed to notice that the liability to remit contribution starts only after 15 days of payment of wages as per Para 38 of EPF Scheme.
- 9) The respondent also failed to consider the grace period available to the appellant establishment as per circular dt. 24/10/1973 .

4. The respondent filed counter denying the above allegations. Pursuant to an inspection conducted by an Enforcement Officer in the appellant establishment the appellant was brought under the coverage of the Act by order dt. 07/07/2008 wef 01/10/2000. The appellant was deliberately evading compliance with the provisions of the Act despite having a statutory duty to cover the appellant establishment the appellant from the due date and extend social security benefits to its employees. Since the coverage of the appellant establishment was with retrospective effect, the employee share of contribution for the pre-discovery period was waived in compliance with Annexure A2 judgment. The amount recovered towards employees' share of contribution was refunded to the appellant as evidenced by Annexures A3 & A4. Other than the employees' share of contribution, the appellant was liable to remit all other contribution under other schemes from 1/10/2000 and since there was delay in



remittance of contribution, the appellant is liable to pay damages for belated remittance of contribution. Since the evasion of the provisions of the Act was deliberate, the delay was wilful and therefore there is mensrea in delayed remittance of contribution. The second demand notice dt. 22/12/2014 for different period were issued to the appellant directing to show cause against levy of penal damages. Both notices were accompanied by calculation sheets pertaining to the respective periods. There was absolutely no scope for any confusion as the notices were accompanied by separate calculation sheets pertaining to the respective periods. No dispute was raised by the appellant against the delay statements send along with the summons. The respondent initiated an enquiry U/s 14B in pursuant to the second summons issued to the appellant. The appellant was also given more than adequate opportunity to represent his case. The appellant failed to produce any records and failed to attend the enquiry in its later phase. The appellant

failed to produce any evidence to substantiate the financial constraints of the appellant establishment. The delay in remittance occurred only because of the appellant evaded the provisions of the Act by not extending the social security benefits to its employees from their due date of eligibility. The Hon'ble Supreme Court of India in **Hindustan times Vs Union of India**, AIR 1998 SC 688 held that the default on the part of the employer based on financial problems cannot be a justifiable ground for the employer to escape liability U/s 14B of the Act. Since there was clear violation of the provisions of the Act and Schemes by the appellant by not extending provident fund benefits to its employees from due date of eligibility, the appellant cannot plead that there was no mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 SC 90020 LLT 0416 held that “Even if it is assumed that there was loss as claimed, it does not justify the

delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be linked with the financial position of the establishment over different points of time". The Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 (1) LLJ 440 (Ker) held that Para 38 of EPF Scheme obliged the employer to make the payment within 15 days of the close of every month and Para 30 of the scheme cast an obligation on the employer to pay both the contributions payable by himself and on behalf of the member employed by him, in the first instance.

5. The appellant establishment is covered retrospectively w.e.f 1/10/2000 on 7/7/2018. According to the learned Counsel for the respondent, the appellant violated the provisions of the Act and Schemes since he failed to extend the benefit of provident fund from the due date of the eligibility. According to the Counsel, EPF & MP Act 1952 acts on its own force and it is upto the appellant to extend the social security

benefits to its employees when the statutory requirements are satisfied. Though the appellant establishment was coverable under the provisions of the Act w.e.f 01/10/2000, the appellant establishment failed to extend the benefits from that day. In the year 2008 an Enforcement Officer inspected the appellant establishment and noticed that the appellant establishment was coverable w.e.f 01/10/2000 and accordingly the appellant establishment was covered through a coverage memo dt 07/07/2008 w.e.f 1/10/2000.

6. The respondent initiated an enquiry U/s 7A to quantify the dues from the date of coverage. The appellant requested for waiver of employees share, on the ground that the same was not deducted from the salary of the employees. During the pendency of Sec 7A enquiry the appellant remitted the employer's share of contribution. Therefore the respondent issued an order dt 17/12/2009 determining the amount of Rs.2,57,426/- being the employees' share of contribution due

from the appellant for the period from October 2000 to May 2008. The appellant preferred an appeal before the EPF Appellate Tribunal New Delhi as ATA No. 83(7)/2000. The appeal was admitted subject to remittance of 40% of the assessed amount with the respondent. The appellant remitted an amount of Rs.1,03,022/-, with the respondent on 08/03/2010. The Hon'ble Tribunal vide its order dt. 04/07/2011 allowed the appeal and directed the respondent to calculate the provident fund dues excluding the employees share. Since the respondent failed to initiate further action, the appellant approached the Hon'ble High Court of Kerala in W.P.(C) No. 3435 of 2013 and the Hon'ble High Court vide its judgment dt. 06/02/2013 directed the respondent to finalize the matter and refund the excess amount to the appellant . The respondent refunded the pre-deposit towards employee share vide DD dt. 28/05/2014 through Annexure 4 letter dt. 02/06/2014.

7. The respondent thereafter initiated action for assessing damages U/s 14B of the Act for belated remittance of contribution. According to the learned Counsel for the appellant, two separate summons were received proposing different amounts of damages. However according to the learned Counsel for the respondent the summons were accompanied by delay statements and it was very clear that the assessment of damages proposed under those summons were for different periods. The appellant was afforded opportunities for personal hearing. On 07/04/2015 a representative of the appellant attended the hearing and submitted their written objection. It was pointed out that the levy of damages for the period from 01/10/2000 to 31/08/2008 was subject matter of dispute which culminated only on 28/05/2014. The learned Counsel for the appellant also pointed out that the appellant had remitted an excess amount of Rs.1,03,022/- which was refunded to him only in June 2014 as

per Annexure A4. The learned Counsel therefore submitted that there was no delay on his part and no damages are leviable. The learned Counsel for the respondent pointed out that there was deliberate delay on the part of the appellant and the appellant was liable to remit all the other contribution including employer's share of provident fund contribution and the same was remitted belatedly, which will attract provident fund deduction. It is seen that the dispute was regarding waiver of employees' share of contribution there was no dispute regarding the liability of the appellant to remit employers' share of contribution and contributions under other schemes. As rightly pointed out by the learned Counsel for the respondent, it is a statutory obligation of the appellant to extend social security benefits when the statutory requirements are met. The appellant did not do so and the respondent took action to cover the establishment from 01/10/2000 in 2008. According to the learned Counsel for the respondent there was

mensrea in belated remittance of contribution as the appellant deliberately violated the provisions of the Act . To some extent the claim of the learned Counsel for the respondent is correct.

8. The learned Counsel for the appellant also raised some other issues which is required to be answer in brief. According to the learned Counsel for the appellant the impugned order is not issued by a competent officer. The claim of the learned Counsel for the appellant is not correct as the Government of India vide notification No. SO 1553 dt. 17/04/2002 delegated the powers to the respondent authority to handle cases U/s 14B of the Act. The claim of the learned Counsel for the appellant that the appellant was not informed of the details of damages etc are also not correct as the summons issued U/s 14B was accompanied by delay statements which contains the details such as the amount due, the due date of payment, the date of remittance, the delay in remittance and also the proposed damages. The claim of the appellant that they remitted an



excess amount of Rs.1,03,022/- is also not correct. It is seen that the said amount is remitted U/s 7 (O) of the Act as per the direction of the Hon'ble EPF Appellate Tribunal, New Delhi. The respondent was required to refund the money after the appeal was allowed by the EPF Appellate Tribunal. The learned Counsel for the appellant also pointed out that the calculation of the damages by the respondent authority is not correct as the appellant is liable to remit contribution only within 15 days of payment of wages to the employees. This issue was considered by the Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 and also by the Hon'ble High Court of Kerala in **Jewel Homes Pvt. Ltd Vs EPHO**, W.P.(C) No. 25884/2011. In the light of the above decision the appellant is liable to pay damages if the contribution is not remitted within 15 days of the close of the month. Similarly the claim of the appellant regarding the grace period for remitting the contribution is also

answered by the Hon'ble High Court of **Kerala in Jewel Homes Pvt. Ltd Case (supra)** holding that the grace period is available to the appellant only if the payment are made within the grace period .

9. From the factual and legal position discussed above it can be seen that there is a retrospective coverage of the appellant establishment w.e.f 01/10/2000 and the coverage memo is issued only on 07/07/2008. As already pointed out there is a violation of provisions by the appellant as it is a statutory obligation of the appellant to start compliance when the statutory requirements are satisfied. It is also clear that the appellant did not deduct the employees' share of contribution from the salary of the employees' during the relevant period. They requested for waiver of employees' share which was declined by the respondent therefore the appellant approached the EPF Appellate Tribunal which allowed the waiver of employees share. It is also seen that the appellant establishment

deposited an amount of Rs.1,03,022/- with the respondent on 8/3/2010 which was refunded to the appellant as per the direction of the Hon'ble High Court on 02/06/2014 only. Taking into account all the above facts, I am of the considered view that this is not a fit case where maximum amount of damages can be assessed and recovered from the appellant .

10. Considering all the facts, circumstances and pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 60% of the damages.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer