



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 08th day of March, 2021)

APPEAL No.548/2019
(Old No. ATA. 271 (7) 2010)

Appellant

M/s. Chandra Cashew Factory
Neduvithur
Thevalapuram P.O
Puthur,
Kollam – 691507

By Adv. Latheesh Sebastian

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on
03/02/2021 and this Tribunal-cum-Labour Court on
08/03/2021 passed the following:

ORDER

Present appeal is filed from Order No.
KR/16181/KLM/PD/2010/3173 dt. 07/04/2010 assessing
damages U/s 14 B of EPF & MP Act,1952 (hereinafter referred

to as 'the Act') for belated remittance of contribution for the period 03/2005 to 12/2006. The total damages assessed is Rs.3,53,412/-. The impugned order is a composite order assessing damages and interest U/s 7Q of the Act.

2. The appellant is a cashew factory engaged in the production and sale of cashew. The respondent initiated action U/s 7A of the Act alleging that there was evasion of wages on the basis of the returns filed under ESIC and EPF Acts for the period 04/2004 to 04/2008. The appellant appeared before the respondent, produced all the records and the respondent thereafter issued an order assessing dues to the tune of Rs.5,55,400/- and the respondent remitted the amount on 01/07/2009. The respondent thereafter issued a summons dated 10/2/2010 alleging delay in remittance of contribution and demanding damages and interest for belated remittance. A representative of the appellant appeared before the respondent and requested for time for filing objection. In the proceedings the respondent has recorded that the representative of the appellant admitted the delay and sought time for the remittance of damages and interest. There was no willful delay on the part of the appellant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The establishment is chronic defaulter in remitting provident fund and allied dues in respect of employees. The claim of the appellant that they were regular in compliance is totally incorrect. There was delay in remittance of contribution for the period from 03/2005 to 12/2006 and belated remittance of contribution will attract damages U/s 14B and interest U/s 7Q of the Act. Hence a notice was issued to the appellant along with the delay statement showing the due date of payment, the amount and the actual date of remittance along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing on 22/02/2010 and admitted the delay in payment of contribution. He requested for time for making the remittance. Since the appellant failed to remit the dues the impugned order was issued. It is true that there was default on the side of the appellant for the provident fund from 04/2004 to 04/2008 and an enquiry U/s 7A of the Act was initiated for assessing the dues. The dues were assessed on

the basis of the records produced by the appellant and subsequently action was initiated to assess damages and interest for belated remittance of contribution. All the above action on the part of the respondent is legal and as per the provision and the Acts and Schemes thereunder. According to the learned Counsel for the respondent the appellant is a chronic defaulter and their claim that they were regular in compliance is not correct. The appellant was also a defaulter in terms of contribution for the period from 04/2004 to 04/2008 and the amount of dues was quantified U/s 7A and the same was remitted by the appellant. According to the learned Counsel for the appellant the delay in remittance of contribution is due to the delayed assessment of dues U/s 7A. However it is seen that the dues U/s 7A was assessed for the period 04/2004 to 04/2008 whereas the impugned order assessing damages and interest is issued for the period 03/2005 to 12/2006. Hence the claim of the appellant that the delay was only due to delayed assessment of dues is not correct.

4. This appeal was filed before the EPF Appellate Tribunal New Delhi and the same was rejected on the ground that none appeared before the EPF Appellate Tribunal on 07/07/2010. The said order was challenged before the Hon'ble High Court of Kerala in WP (C) No. 24227/2010 and the Hon'ble High Court vide order dt. 10/03/2011 directed the appellant to deposit Rs.1,45,000/- and directed the EPF Appellate Tribunal to take back the appeal to file. After the transfer of the files from EPF Appellate Tribunal to this Tribunal notice was issued to the appellant and the same was acknowledged by the appellant. However there was no representation for the appellant when the matter was taken up for hearing. Hence the appeal was again dismissed vide order dt. 30/12/2019. The appellant approached the Hon'ble High Court of Kerala in WP (C) No. 4050/2020 and the Hon'ble High Court vide order dt. 13/2/2020 disposed off the Writ Petition directing the appellant to approach the Appellate Tribunal and seek restoration of the appeal in terms of the Employees Provident Fund Appellate Tribunal (Procedure) Rules 1997. Accordingly the appellant filed a review application which was allowed by this Tribunal vide order

dt.09/12/2020 and the appeal was restored to file for final hearing. .

5. The case of the appellant is that the mitigating circumstances leading to the delay in remittance of provident fund contribution is not considered by the respondent authority. Even in this appeal the appellant failed to disclose the mitigating circumstances that are required to be considered while deciding the quantum of damages. The only document available is a letter dt. 03/10/2011 issued by the appellant addressed to the respondent wherein it was stated that there was huge loss due to hike of processing of raw cashew and lack of timely foreign contract for export. It is to be pointed out that even this representation is after finalization of the proceedings on 27/9/2011. Hence the claim of the appellant that the mitigating circumstances are not considered by the respondent has no basis. The appellant also claimed that the representative of the appellant produced the copies of challans before the 14B authority. However in Annexure A3 daily proceedings order dt. 06/9/2011 it is clearly indicated that "Shri. Vinod requested for time to make payment as the Chairman is out of the country." There is no

recordings in the proceedings that the representative of the appellant produced any records before the respondent authority on the said date. The appellant now disputes these proceedings on the ground that the representative never admitted to make the payment as per the notice. If that be so, it is not clear as to what prevented the representative to point out this anomaly on the date of hearing when the proceedings were issued to the parties who attended the hearing.

6. The only ground pleaded by the appellant is that of financial difficulties. When the appellant pleaded financial difficulties it was up to the appellant to produce the records before the respondent to substantiate their claim. The appellant failed to produce any records before the respondent authority. The appellant also failed to produce any document to substantiate their claim of financial difficulties in this appeal also. In ***Sree Kamakshy Agency Pvt. Ltd Vs EPF Appellate Tribunal and Another***, 2013 (1) KHC 457 the Hon'ble High Court of Kerala held that " If it is shown in that one was under severe financial difficulties on account of reasons stated **and the documents in support of the said fact is produced**, the authorities are bound to consider the

same in a pragmatic manner and not taking a pedantic approach". The Hon'ble High Court of Delhi in ***M/s. Kee Pharma Ltd., Vs APFC***, 2017 LLR 871 also held that the employers will have to produce the documentary evidence before the authorities which could reveal that due to mitigating circumstances the appellant establishment was restrained from compliance with the provisions of the Act in time. The law laid down in the above said decisions as squarely applicable to the present case as the appellant only admitted the liability and agreed to remit the damages before the respondent authority. Having failed to raise any contentions before the respondent authority the appellant cannot plead new grounds in this appeal alleging that the respondent did not consider the mitigating circumstances of the appellant. It is further seen that the default is for the period 04/2004 to 04/2008 and the impugned order is issued on 07/04/2010. The appellant by default got more than 15 years to retain the amount with him, which in the hands of the respondent organization could have benefitted the poor employees by utilizing the interest earned from the damages amount for providing better benefits.

7. Considering all the facts, pleadings and circumstances in this case, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer