



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**
Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday the 25th day of October, 2021)

APPEAL No.553/2019
(Old No. ATA 636(7)/2010)

Appellant : M/s. Thomson Cashew Company,
Chengamanad P.O.,
Kottarakkara,
Kollam – 691 332.

By Adv. Alex Thomas

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
30/04/2021 and this Tribunal-cum-Labour Court on
25/10/2021 passed the following:

ORDER

Present appeal is filed from Order No. KR/KLM/3535/PD/2010/666 dt. 10/8/2010 assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period 03/2006 to 02/2009. The total damages assessed is Rs. 2,62,409/-. The impugned order is a composite order demanding interest U/s 7Q of the Act also for the same period.

2. The appellant establishment is engaged in procuring and processing of raw cashew nut and selling cashew kernel and related products. The appellant establishment was regular in compliance. The appellant received an order dt. 10/08/2010 directing the appellant to remit an amount of Rs. 2,62,409/- towards damages U/s 14B of the Act. The said order is produced and marked as Annexure A1. The respondent issued the said order without

giving an opportunity of hearing to the appellant and without verifying the relevant records. The show cause notice dt. 23/06/2010 referred to in the impugned order was not served on the appellant. The appellant could not attend the hearing because of the same. There was no willful defiance of law and laches on the part of the appellant. The impugned order is an ex-parte order issued behind the back of the appellant. Alongwith Annexure-A1, the respondent has not issued any statement showing the details of damages U/s 14B. Before passing the impugned order, the respondent was not given an opportunity of hearing. The respondent failed to exercise the discretion available to him U/s 14B of the Act. The respondent authority ought to have seen that the rates of damages provided under Para 32A of EPF Scheme is only a guideline and not mandatory. The respondent authority failed to take into account the spirit of various decisions by the Hon'ble High Court as well as Apex Court with regard to the assessment of damages. The

damages assessed by the respondent authority is on a higher side.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant failed to remit the contributions for the period from 03/2006 to 02/2009 in time. The delay in remittance attracted damages U/s 14B and interest U/s 7Q of the Act. The respondent authority issued a notice dt. 23/06/2010 to the appellant to show cause why damages shall not be levied for delayed remittance of contribution. The notice was also accompanied by a statement specifying the amount of dues, due date of payment, the actual date of payment and the period of delay committed by the establishment. Further the appellant was also given an opportunity for personal hearing on 12/07/2010. There was no representations for the appellant, though the appellant acknowledged the notice on

25/06/2010. Copy of the notice dt. 23/06/2010 and also the acknowledgement card received from the appellant are marked as Exbt. R1 and R2 respectively. However to meet the requirement of natural justice, the enquiry was adjourned to 03/8/2010 vide adjournment notice dt. 16/07/2010. Even on 16/07/2010 there was no representation for the appellant. Hence it was clear that the appellant was deliberately trying to evade the legal obligation cast upon him under the Act and no fruitful object will be achieved by adjourning the matter any further. Hence the respondent authority issued the impugned order claiming interest and damages. The claim of the appellant that he did not receive any summons from the respondent authority is disproved by Exbt. R1 & R2. When there is delay in remittance of contribution it is mandatory that the appellant shall remit damages and interest. The claim of the appellant that the details of the delay was not communicated to him is also denied in view of the fact that the notice along

with the delay statement was acknowledged by the appellant. The respondent authority has given reasonable opportunity to the appellant which was not availed by him and therefore the appellant cannot plead that he was denied an opportunity for personal hearing. In **TTG Industries Vs RPFC**, the Hon'ble High Court of Madras held that the respondent authority cannot be blamed if the establishment failed to avail the opportunity provided to them for representing the case. Sec 14B is a quasi judicial function and the discretion to award damages would be exercised within the limit fixed by the statute. In **TCM Woolen Mills Pvt. Ltd Vs RPFC**, the Hon'ble High Court held that “...despite a repeated number of opportunities given to the petitioners for personal hearing they chose not to avail most of them. Apparently it is plain that in such a situation unless the objections and the factual matters are pressed before the Commissioner he cannot imagine the same and pretend to adjudicate therein. Reference in this connection may be

made to the Division Bench judgment of the Allahabad High Court reported as **Regional PF Commissioner, UP Vs Allahabad Canning Co., Bamrauti**. Therein it has been rightly held and virtually in identical circumstances that the reasons expected to be recorded in a speaking order must inevitably depend on the nature of the contention raised in the reply to the show cause notice. Obviously, where the objections raised are themselves vague and devoid of necessary particulars, even a finding that the plea is untenable is a sufficient compliance of the requirement of a reasoned order". The word used in Sec 14B is default in payment of contribution and therefore the word 'default' must be construed in the light of Para 38 of EPF Scheme which provides that the payment of contribution has got to be made by 15th of the following month as pointed out by the Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, AIR 1979 SC 1803. Sec 14B is inserted into the Act with an object to act as a deterrent

measure on the employers to prevent them from not carrying out their statutory obligations to make payments to provident fund in time.

4. The demand of interest U/s 7Q cannot be challenged in appeal U/s 7(I) of the Act.

5. There was delay in remittance of contribution for the period from 03/2006 to 02/2009. The respondent authority, therefore, initiated action for assessing damages U/s 14B and interest U/s 7Q of the Act. A notice was issued to the appellant enclosing therewith the delay statement and also giving an opportunity to the appellant to appear before the respondent and explain the delay. The notice was acknowledged by the appellant as per Exbt. R2. The appellant failed to attend the hearing or file any representation or written statement before the respondent authority. The respondent authority adjourned the hearing to 03/08/2010 to provide one more opportunity to the appellant

and issued adjournment notice dt. 16/07/2010. The appellant failed to attend the hearing on the said date also. The respondent authority felt that the appellant is deliberately delaying the process of assessment of damages and interest and therefore issued the impugned order. The only case of the appellant in this appeal is that the appellant was not issued any notice by the respondent authority. The claim of the appellant failed when the respondent authority produced the acknowledgement card along with copy of summon dt.06/08/2010. It is mandatory under the provision of sec 14B that the appellant shall be given an opportunity of personal hearing. However if the appellant failed to attend the hearing or failed to file any representation or written statement, the respondent authority cannot be faulted. The learned Counsel for the appellant relied on the decision of Hon'ble High Court of Madras in **ADEMS VS RPFC**, Writ Petition (MD) No. 4032 of 2015, to argue that not providing an opportunity will vitiate the proceedings U/s 14B.

However it is settled law that when the establishments acknowledged the summon issued by the respondent and fail to respond or attend the hearing and plead their case, the employers cannot come up in appeal and argue that the respondent authority has not given adequate opportunity. In this particular case it is seen that the notice of hearing was acknowledge by the appellant but he failed to respond to the notice. However the respondent authority provided one more opportunity for personal hearing which was also not availed by the appellant. In **Steel Tubes India Ltd Vs Assistant PF Commissioner**, 2012 LLR 319 (MP.DB) the Division Bench of Hon'ble High Court of Madhya Pradesh held that after having acknowledged the notice, if an employer fail to furnish any reply and defended the delay in payment of contribution, the respondent authority and EPF Appellate Tribunal are right in deciding the matter ex-parte. In this case the respondent has succeeded in proving that the appellant establishment was served with a notice and the

respondent also produced the postal acknowledgement having served notice on the appellant. Since the appellant failed to attend the hearing or respond to the notice the respondent authority cannot be faulted. As rightly pointed out by the learned Counsel for the respondent, there was no opportunity for issuing a speaking order which can only be done in reply to any stand taken by the appellant. The learned Counsel for the respondent also pointed out that the appellant has no case that the wages of the employees were not paid in time. When wages are paid, the employees' share of contribution is deducted from the salary of the employees. The appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust, the appellant cannot claim that there was no mensrea in belated

remittance of contribution, at least to the extent of 50% of the total dues.

6. Considering the facts circumstances, pleadings and evidence in this appeal I am not inclined to interfere with the impugned order U/s 14 B of the Act.

7. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in

St. Mary's Convent School Vs APFC, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

In view of the above the appeal is dismissed.

Sd/-

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