



BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL~CUM~LABOUR COURT, ERNAKULAM

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

(Monday the 11th day of April, 2022)

APPEAL No.559/2019
(Old No. ATA. 542(7)2011)

Appellant

M/s. Sree Durga Cashew Factory
Thekkumcherry,
Puthur P.O
Kollam - 691 507

By Adv. B. Mohan Lal

Respondent

The Regional 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 09/03/2022
and this Tribunal-cum-Labour Court on 11/04/2022 passed
the following:

ORDER

Present appeal is filed from Order No. KR/KLM/16222 /
PD / 2010-11/ 712 dt. 10/06/2011 assessing damages U/s 14B
of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for

belated remittance of contribution for the period 04/2007 to 07/2008. The total damages assessed is Rs.1,89,479/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant establishment is cashew factory and is covered under the provisions of the Act. The appellant remitted the contribution for the period from 04/2007 to 07/2008 before the respondent authority initiated the proceedings as per Sec 7A of the Act. Without considering the documents produced the respondent authority issued an order assessing the dues on difference in wages for an amount of Rs.3,99,455/-. The appellant remitted the amount vide Challan dt.14/03/2009. The respondent issued notice dt. 25/04/2011 under Sec 14B of the Act directing the appellant to show cause why damages and interest shall not be levied for belated remittance of contribution. On 09/05/2011 an authorized representative of the appellant attended the hearing and submitted that there is no willful latches on the part of the appellant in delayed remittance of contribution. Without considering the contentions of the appellant, the respondent issued the impugned order.

3. The respondent filed counter denying the above allegations. The appellant establishment is a cashew factory and is covered under the provisions of the Act. It is a statutory obligation on the part of the appellant to remit the contribution within 15 days of the succeeding month in which the employee has earned the salary and dues become payable. Since the appellant delayed remittance of contribution, the respondent initiated action for assessing damages and interest. The appellant is a chronic defaulter. Since the appellant delayed remittance of contribution the respondent issued notice dt. 25/04/2011 U/s 14B of the Act. A detailed delay statement was also forwarded to the appellant. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and submitted that the delay in remittance was due to acute financial crisis of the appellant establishment. The appellant however failed to produce any documents to substantiate their claim of financial difficulties. Sec 14B is meant to penalize defaulting employers and it is also a warning to employers in general not to commit breach of statutory requirements U/s 6 of the Act.

4. The appellant establishment delayed remittance of contribution for the period 04/2007 to 07/2008. The respondent therefore initiated action under Sec 14B vide notice dt. 25/04/2011. A representative of the appellant attended the hearing and submitted that the delay in remittance was due to the financial crisis of the appellant establishment. The appellant however failed to produce any documents to support the claim of the appellant. The respondent therefore issued the impugned order.

5. In this appeal also the learned Counsel for the appellant reiterated its position that the delay in remittance was due to financial difficulties of the appellant establishment. The learned Counsel for the respondent pointed out that the appellant failed to produce any documents to support the financial difficulties before the respondent authority. The appellant failed to produce any documents in this appeal also to support the claim of financial constraints. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs**

EPF Appellate Tribunal, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B if the appellant pleads and produces documents to substantiate the same. In **Elstone Tea Estates Ltd Vs RPFC, W.P.(C) 21504/2010** the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

6. The learned Counsel for the appellant also pleaded that there was no intentional delay in remittance of contribution and there is no mensrea.

7. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act . In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation, Civil Appeal No. 2136/2012**, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC, 2014 (15) SCC 263** and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd, 2017 (3) SCC 110** held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

8. 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.

9. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal from Sec 14B Order is dismissed on merits and the appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer