



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

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

(Monday the 26<sup>th</sup> day of April, 2021)

**APPEAL No.614/2019**

(Old No. ATA 670 (7) 2013)

Appellant

M/s. Biocraft  
Thachampara  
Palakkad – 678593.

Respondent

The Assistant PF Commissioner  
EPFO, Sub-Regional Office  
Eranhipalam P.O  
Kozhikode-673 006.

By Adv. Dr. Abraham P. Meanchinkara

This case coming up for final hearing on  
22/03/2021 and this Tribunal-cum-Labour Court on  
26/04/2021 passed the following:

**ORDER**

Present appeal is filed from Order No. KR / KK / 23120/  
Enf-III (3) / 14B / 2013 / 3097 dt. 05/07/2013. assessing  
damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to  
as 'the Act') for belated remittance of contribution for the period  
06/2005 to 03/2012. The total damages assessed is

Rs. 97,631/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is an establishment engaged in tissue culture business. Though the appellant establishment started with high expectation, the appellant establishment started incurring losses from the beginning. However the appellant continued the business in a limited way. The respondent issued notice dt.11/06/2013 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant contented before the respondent that there is no contumacious conduct or willful, disobedience on the part of the appellant. The appellant also pointed out that there was no mensrea in belated remittance of contribution. The appellant was under a bonafide belief that the unit is not coverable under the provision of the Act. Ignoring the above contentions the respondent issued the impugned orders. The respondent failed to exercise his discretion U/s 14B of the Act. In ***Employees State Insurance Corporation Vs HMT Ltd***, AIR 2008 SC 1322 the Hon'ble Supreme Court held that the existence of mensrea to contravene a statutory provision is a necessary ingredient for levy

of damages. The respondent also failed to take note of the changes incorporated in the Act after introduction of Section 7Q of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment failed to remit the contribution in time for the period from 06/2005 to 03/2012. Hence a notice was issued on 11/06/2013 to show cause why damages as envisaged U/s 14B of the Act should not be recovered for having made belated payment of contribution. A detailed statement showing the delay in remittance of contribution was also forwarded along with the notice. The appellant was given an opportunity for personal hearing on 28/06/2013. A representative of the appellant appeared on behalf of the establishment. He did not raise any dispute regarding the delay statement sent across to them. In ***Bharath Plywood Timber Wood Private Ltd Vs Employees Regional PF Commissioner***, 1979 (50 FJR 74 (KER HC) the Hon'ble High Court observed that if an employer default in payment of any contribution to the fund he shall be liable to pay the amount by way of penalty such damages not exceeding the amount of arrears as specified in the Scheme. Though there may be sufficient reasons to make belated payment that is not a ground for granting exemption for paying penalty or damages. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs***

**Union of India**, 1979 (4) SCC 573 held that if the employer neglects to remit or diverts the money for alien purposes the fund gets dry and the retirees are denied the financial support when they most need it. As per Para 38 of EPF Scheme, the employer is liable to pay monthly provident fund contribution within 15 days of close of every month. Non remittance of provident fund contribution recovered from the salary of the employees is deemed to be an offence of criminal breach of trust punishable U/s 406 & 409 of Indian Penal Code. In **Associated Industries Pvt. Ltd. Vs RPFC**, 1963 (2) LLJ 652 the Hon'ble Supreme Court held that the employers are under legal obligation to deposit their share of contribution to the fund within the time prescribed, the moment Act and Schemes become applicable to them. In **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982 (1) LLJ 440 the Hon'ble High Court of Kerala held that the employers are under legal obligation under Para 30 & 38 of EPF Scheme to remit the contribution in the first instance within 15 days of close of the month.

4. The appellant pleaded retrospective coverage and financial difficulties as reasons for belated remittance of provident fund contribution. It is seen that there was some dispute regarding coverage which was finally resolved U/s 7A of the Act. According

to the appellant they were under a bonafide relief that the appellant is not liable to be covered under the provision of the Act. Since there was a dispute regarding coverage and there was delay in resolving the same under Sec.7A there was some delay in remittance of contribution. According to the appellant there was no intentional delay and there was no menresa in delayed remittance of contribution. According to the learned Counsel for the respondent the appellant had not taken any such defense before the respondent authority. On receipt of notice of delay, the representative of the appellant attended the hearing and admitted the delay in remittance of contribution and therefore, there was no occasion for the respondent authority to consider any of the grounds pleaded now in this appeal. The appellant failed to produce any documents to substantiate their claim of financial difficulty. 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 **SreeKamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013(1) KHC 457 also 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. No ground of financial difficulty was pleaded before the respondent authority and documentary evidence was produced. However it is seen that there was some dispute regarding the coverage and the appellant was under the bonafide relief that the appellant establishment is not coverable under the provisions of the Act. The learned Counsel for respondent did not dispute the claim of the appellant that the dispute regarding coverage was resolved through Sec 7A of the Act. The learned Counsel for the respondent disputed the claim of the appellant that there was no intentional delay. There was even delay in remitting the employees' share of contribution which was deducted from the salary of the employees.

5. 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 direct to remit 80% of the damages assessed as per the impugned order.

6. 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.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is direct to remit 80% of the damages. The appeal against Sec.7(Q) order is dismissed as not maintainable.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer