



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

सत्यमेव जयते

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

(Friday the 22<sup>nd</sup> day of January, 2021)

**APPEAL No.629/2019**

Appellant M/s. Emmanuval Sarees,  
XXV/2131/1 , Nehru Bazar ,  
Trichur – 680001.

By Adv. Sajith P

Respondent The Assistant PF Commissioner  
EPFO, Sub- Regional Office,  
Kaloor, Kochi – 682 017.

This case coming up for final hearing on  
08/01/2021 and this Tribunal-cum-Labour Court on  
22/01/2021 passed the following:

**ORDER**

Present appeal is filed from order No. KR/KC/  
27093/Damages Cell/Ex.Parte/2013/3027 dt. 21/05/2013  
assessing damages U/s 14B of EPF & MP Act, 1952  
(hereinafter referred to as 'the Act'.) for belated remittance  
of contribution for the period from 06/2008 to 02/2010. The  
total damages assessed is Rs. 1,94,316/-.

2. The appellant establishment is engaged in wholesale textile business run by a partnership firm. The firm is having two different retail units. Though the units are independent, the appellant decided to enroll the employees to the benefits of provident fund. The appellant received a notice from the respondent alleging delay in remittance of PF contribution. The appellant attended the hearing and submitted a detailed written explanation dt. 13.12.2012 which is produced and marked as Annexure 2. Without considering the representation filed by the appellant, the respondent issued the impugned order. The respondent ought to have found that after introduction of Sec 7Q in the Act, the interest paid to the employees are already covered. In **ESIC vs HMT Ltd**, AIR 2008 SC 1322 the Hon'ble Supreme Court held that the existence of mensrea is a necessary ingredient for levy of damages.

3. Respondent filed counter denying the above allegations. Appellant defaulted PF contribution for the period from 6/2008 to 2/2010. Belated remittance of contribution will attract penalty U/s 14B of the Act read with Para 32 A of EPF Scheme. Hence a notice was issued to the appellant along with a copy of the delay statement. The appellant was also given

opportunities for personal hearing. The enquiry was posted on 14/12/2012, 12/3/2013, 11/4/2013 and 15/5/2013. The appellant failed to attend the hearing but send letters dt. 20/11/2012 and 30/12/2012 stating that the delay was due to certain genuine disputes regarding the coverage of the establishment under the Act.

4. The only ground pleaded by the appellant is with regard to the retrospective coverage of the appellant establishment clubbing two branch units of the appellant. Though the details are not available, it is pleaded that the delay in remittance occurred due to retrospective coverage of the appellant establishment. According to the appellant they are having two independent branches for which they maintained separate books of accounts and also employees. The number of employees in individual branches did not reach the statutory limit of twenty. The respondent covered the establishment clubbing both the units. Accordingly the coverage was done from a retrospective date. Though the Act applies on its own force, in the circumstances explained in the appeal, it is not possible to hold that there was any mensrea in belated remittance of contribution.

5. Considering the fact and circumstances of this case I am inclined to hold that interest of justice will be met if the appellant is directed to remit 75 % of the damage assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 75 % of the damages assessed U/s 14B of the Act.

Sd/-

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