



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

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

Friday the 26th day of February, 2021)

APPEAL No.659/2019
(Old No. ATA No.212 (7)2013)

Appellant : Shri. Joy Varghese
'Jogi', Chalappuram P.O
Near Canara Bank (Chalappuram)
Kozhikode - 673 002

By Adv. C.Muralikrishnan

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

By Adv. Dr. Abraham P Meachinkara

This case coming up for final hearing on
28/01/2021 and this Tribunal-cum-Labour Court on
26/02/2021 passed the following:

ORDER

Present appeal is filed from Order No.
KR/KK/ 11678 / Enf- 3 (2) 2012-13/ 2900 dt. 19/10/2012

assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period 04/2003 to 03/2008. The total damages assessed is Rs. 1,54,507/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant was the owner and employer of M/s. Kerala Rubber Products. The factory was closed on December 2005 on account of adverse business conditions and continuous loss. The factory license issued was also cancelled by the office of Factories and Boilers Directorate with effect from 01/01/2006. The cancellation order is produced and marked as Annexure A1. There were no employees and no wages paid to the employees since the closure of the factory. However as per the directions of the respondent the appellant continued remitting provident fund contribution up to 31/03/2008. The contributions made by the appellant for the period from 01/01/2006 to 31/03/2008 is liable to be refunded. While so the appellant received a show cause notice dt. 26/07/2012 to show cause why damages U/s 14B shall not be levied. As the appellant was

not well he could not attend the hearing. After recovering from the illness, the appellant send Annexure 2 letter on 20/10/2012 to the respondent authority. The respondent authority send a reply which is produced and marked as Annexure A3. He also stated that the remittance made by the appellant had already been accounted in the individual accounts of the employees and there is no possibility of any refund of the contribution. The respondent issued the impugned orders ex-parte, as the appellant could not attend the proceedings. The appellant send a representation to the respondent requesting to set aside the ex-parte order on 26/12/2012 which is produced and marked as Annexure A7. The reply given by the respondent is produced and marked as Annexure A8. In **Telephone Industries Vs APFC**, 2006(3) KLJ 698 the Hon'ble High Court of Kerala held that merely because there is belated payment of contribution, liability to pay damages does automatically arise the respondent authority shall use his judicial discretion while imposing damages by relying his mind to the facts and circumstance of this case. The **Hindustan Steel Limited Vs State of Orissa**, AIR 1970 SC 253 the Hon'ble Supreme Court held that an order

imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. In ***ESI Corporation Vs Qetcos Ltd***, 2008(3) KLT 336 the Hon'ble High Court of Kerala held that mensrea is a relevant consideration and in appropriate cases the authority can reduce or waive damages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant is liable to remit contribution as per the statutory provisions. The appellant delayed payment of contribution for the period from 04/2003 to 3/2008. Hence a notice dt. 26/11/2012 was issued to appellant to show cause why damages U/s 14B of the Act shall not be recovered. None appeared on the schedule date of hearing. Hence the enquiry was adjourned to 18/09/2012. Though the notice of enquiry was acknowledged there was no representation on behalf of the appellant. The respondent therefore issued the impugned orders. In ***Hackbridge***

Hewitic and Easum Ltd., and Others Vs Provident Fund Inspector, CrI. MP No.11953/1988 the Hon'ble High Court of Madras observed that the offence became complete on the expiry of the due date(before which the contributions were statutorily required to be made) and the late payment could not have been absolved the original quilt. In **Calicut Modern Spinning & Weaving Mills Ltd.,Vs RPFC**, 1981(1) LLJ 440 the Hon'ble High Court of Kerala held that failure to make contribution resulting in default will have to be visited by damages U/s 14B of the Act.

4. According to the learned Counsel for the appellant the appellant establishment is closed w.e.f 01/01/2006. The appellant produced the order of the Directorate of Factories and Boilers dt.22/02/2010 to substantiate his case that the appellant unit is closed w.e.f 01/01/2006. According to the learned Counsel for the respondent the appellant continued remitting contribution till 31/03/2008 and the contribution paid by the appellant is already credited to the account of the employees of the appellant. Therefore the appellant cannot at this state come around and state that the appellant was not liable to remit contribution for the period 01/01/2006 to

31/03/2008. It was also pointed out that it is not only contribution but appellant had also filed the returns bifurcating the contribution to the individual employees upto 31/03/2008. Admittedly the impugned orders are the ex-parte orders the appellant could not attend hearing due to health reasons even though he received the summons issued by the respondent. In the above circumstances it is only fair to remand the case to the respondent to re-decide the matter after issuing notice to the appellant. However it is seen that the appellant unit is closed w.e.f 01/01/2006 and no purpose will served by remitting the matter back to the respondent other than delaying the whole process and extending the agony of the appellant. Hence it is felt appropriate to decide the matter on merit after leaving the parties. The impugned order assessing damages U/s 14B is issued for belated remittance of contribution for the period 04/2003 to 03/2008. Admittedly the appellant establishment was working for the period from 04/2003 to 01/01/2006. The appellant has not raised any dispute regarding in delayed payment of contribution for the period from 04/2003 to 01/2006. The basic dispute is with regard to the contribution paid from

01/2006 to 3/2008. The document now produced by the appellant shows that the unit was closed and the license was cancelled w.e.f 01/2006. According to the learned Counsel for the appellant, the appellant establishment continued remitting the contribution till 03/2008 because of the compulsion by the respondent. It is rather difficult to accept such a pleading. If there were no employees and unit is already closed, I fail to understand, how the respondent can compel the appellant to pay the contribution and if wages are not paid to the employees on what basis the appellant remitted the contribution and filed the returns bifurcating the contribution in the name of the individual accounts. The learned Counsel for the appellant relied on the decision of the Hon'ble High Court of Kerala in ***Indian Telephone Industries Vs APFC***, 2006 KHC 1655 to argue that the respondent shall take into account the circumstances of each case before assessing damages U/s 14B of the Act. The learned Counsel for the appellant also relied on the decision of the Hon'ble High Court of Kerala in ***Regional Director, ESI Corporation and Another Vs Managing Director M/s. Qetcos Ltd***, 2008 (3) KHC 111 and ***Regional Director, ESI***

Corporation Vs Shakti Tiles, 1988 KHC 433 to argue that if there is no mensrea and the employer was unable to pay the amount due to circumstances beyond his control, damages can be reduced or totally waived. The learned Counsel also relied on the decision the Hon'ble Supreme Court in **Hindustan Steel Ltd Vs State of Orissa**, 1969 KHC 561 to argue that the decision to impose penalty for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration all the relevant circumstances. Though the general principles laid down in the above decisions are applicable to penalty imposed against an employer, it is also required to be kept in mind that the EPF and MP Act is a welfare legislation and the regular statutory compliance is a mandatory requirement for proper running of the schemes. It cannot be compared with a scheme where the general benefits are paid and the benefits are not in any way linked to the contribution. It cannot also be compared with a penalty imposed as per provisions of a revenue statute. However the facts of the present case, will have to be taken into account while deciding the quantum of damages. According to the learned Counsel for the appellant,

the appellant establishment is closed w.e.f 01/01/2006. However the appellant continued the payment of contribution against its employees. The damages were assessed for 04/2003 to 03/2008. The appellant cannot escape the liability of paying damages for the belated remittance of contribution made from 04/2003 to 01/2006.

5. Considering all the facts, circumstances and pleadings I am inclined to hold that interest of justice will be met if the appellant is directed to remit 30 % of the damages assessed as per the impugned order.

6. The learned Counsel for the respondent submitted that an order issued U/s 7Q of the Act cannot be challenged in an appeal U/s 7(I). On 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. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, WP (C) No.234/2012 also held that an appeal against 7Q order is not maintainable.

Hence the appeal partially allowed the impugned order is modified and the appellant is directed to remit 30% of damages assessed U/s 14B of the Act. The appeal filed against the demand of interest U/s 7Q of the Act is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer