



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

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

(Tuesday the 5th day of January, 2021)

APPEAL No.691/2019

Appellant

M/s. Kerala State Cashew Development
Corporation Ltd, P.B.No.13
Cashew House
Kollam – 691 001

By Adv. Vipin P Varghese

Respondent

The Regional PF Commissioner
EPFO, Regional Office, Pattom
Trivandrum - 695004.

By Adv. Ajoy P.B

This case coming up for final hearing on
02.12.2020 and this Tribunal-cum-Labour Court on
05.01.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/
TVM/1227/Damages 2019-20/2289 dt. 29/7/2019.
assessing damages U/s 14B of EPF & MP Act, 1952
(hereinafter referred to as 'the Act'.) for belated
remittance of contribution for the months 6/2014,

8/2014 to 2/2015, 4/2015 to 2/2016, 3/2017, 3/2018 and 7/2018. The total damages assessed is Rs. 17,69,958/-.

2. The appellant is a company fully owned by the Government of Kerala. The appellant is going through severe financial crisis due to adverse business climate and non availability of working capital. The respondent's office at Kollam illegally recovered from the appellant organization an amount of Rs. 53,70,634/- in May 2010. The Hon'ble High Court of Kerala in WPC No. 15194/2013 directed the respondents office at Kollam to adjust the amount against various outstanding dues and return the balance amount with 12% interest to the appellant. The Assistant PF Commissioner, Kollam issued a compliance statement to the appellant. As per the compliance statement the Assistant PF Commissioner Kollam failed to return the money as directed by the Hon'ble High Court of Kerala. The Assistant PF Commissioner Kollam, in violation of the judgment has adjusted an amount of Rs.27,00,940/- against penal

damages. The appellant challenged the above adjustment statement before the Hon'ble High Court of Kerala in Writ Petition No 10935/2017. The Hon'ble High Court has given an interim order of stay against the compliance statement and the Writ Petition is still pending.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of PF contribution during various months from 6/2014 to 7/2018. The delay in remittance of PF contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant along with a delay statement. The appellant was also give an opportunity for personal hearing. A representative of the appellant attended the enquiry and sought time for verification of delay statement. Hence the enquiry was adjourned and the representative of the appellant who attended the hearing on 11/7/2019 confirmed the correctness of the delay statement dt. 6/5/2019. The representative of the appellant also submitted that the appellant is facing financial constraints because of the delay in receipt of grants from the state government.

Admittedly there was direction of the Hon'ble High Court of Kerala in WPC 15194/2013 and connected cases. The Hon'ble High Court directed that no damages need be levied with respect of the delay covered by the above batch of Writ Petitions. The delayed remittance of the statutory dues for which damages have been levied vide impugned order in the present appeal is not covered by any of the Writ Petition mentioned there. The appellant therefore cannot claim any benefits arising out of the judgment. The appellant is a chronic defaulter. The legislative intend of Sec 14B as evolved by the Hon'ble Supreme Court of India in ***Organo Chemicals Vs Union of India*** is to discourage the employers, such as appellant, from defaulting in remittance of PF contribution. The financial difficulties of the appellant cannot be pleaded as a ground for delayed remittance of contribution. The appellant failed to produce any document to support the claim of financial difficulties of the appellant.

4. The appellant raised two grounds for reduction or waiver of damages. The 1st ground is with regard to the claim of the appellant that huge amounts recovered

by the respondent from the appellant is required to be refunded with interest at the rate of 12% as directed by the Hon'ble High Court in W.P.(C) No.15194/2013. According to the learned Counsel for the respondent, the amount of Rs.53,70,634/- along with 12% interest which was directed to be refunded, has already been adjusted as per Annexure A4 statement. The Hon'ble High Court of Kerala in W.P.no.15194/2013 has taken note of the fact that various writ petitions considered by it, pertains to assessment orders made against various units in different parts of the State. W.P.(C)no.16856/2015 challenged the assessment made for the period from 04/2014 to 09/2014 and W.P.(C) no.26605/2015 challenged the assessment made for the period from 10/2014 to 05/2015 by the Assistant Commissioner at Sub Regional Office, Kannur. It also noticed that W.P.(C)no.9613/2016 is with respect to the interest and damages levied by competent authority against the unit at Irinjalakuda with regard to the delay in remittance of contribution. The Hon'ble High Court finally concluded that "In the above circumstances, it is

only proper that the petitioner be granted the amounts due with 12% interest, since the recovery is said to be against the provisions of the EPF Act, which levies an interest @ 12%. The Regional Provident Fund Commissioners or the Authorised Officer, who are the respondents in W.P.(C) nos.16856/2015, 26605/2015 and 9613/2016, shall compute the amounts due as on 30.07.2016 along with the levy of Sec 7Q interest and forward such computation to the Regional Provident Fund Commissioner, Kollam, the 1st respondent in W.P.(C) no.15194/2013. **It is made clear that no damages need be levied with respect to the demands made, covered by the above writ petitions, since the damages in the nature of a deterrent measure, need not be levied against the petitioner in the peculiar facts arising in the case.** The 1st respondent in W.P.(C) no.15194/2013 shall, on receipt of such computation from the various Regional Provident Fund Commissioners, transfer the amount demanded to the said Regional Provident Fund Commissioners within two weeks from the date of receipt of such computation, including Sec 7Q interest for the

period after 30.07.2016 till payment. Any arrears with respect to the factories at Kollam shall also be adjusted from the amounts with due notice to the petitioner-Corporation, which exercise shall also be completed within a period of one month from the date of receipt of a certified copy of this judgment. After adjusting the said amounts, if any amount remains, from the amount of Rs.53,70,634.13 and 12% interest calculated from the date of respective recoveries made, the same shall also be paid to the petitioner-Corporation. The entire exercise shall be completed within the period specified herein above ".5. One of the issue is to be examined is whether the above order of the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013, in anyway, prohibits the respondent from initiating the proceedings which led to the issue of the impugned order. The Hon'ble High Court of Kerala in the above cited judgment has made it clear that no damages need be levied with respect to the demand made **covered by the above writ petitions.** W.P.Nos 16856/2015 and 26605/2015 pertains to assessments made by the Kannur office of Employees

Provident Fund Organization. W.P.(C) no.9613/2016 pertains to interest and damages levied by competent authority having jurisdiction over Iringalakuda. W.P.No.15194/2013 is with respect to damages and interest due for the period from 02/2005 to 01/2006 and in respect of KR/TVM/1227, Factory no.9, Kilimanoor of the appellant establishment. Hence the assessment of dues in respect of respondent's office at Kollam in W.P. No.15194/2013 is only with respect to the dues assessed for a particular period from 02/2005 to 01/2006. The impugned order is issued in respect of the unit covered under KR/TVM/1227 for the delayed remittance of contribution for period from 06/2014 to 07/2018. From the above analysis, it is clear that the judgment of the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013 will not in any way prohibit the respondent from assessing damages for belated remittance of contribution in respect of the unit for the period from 6/2014 to 07/2018. According to the learned Counsel for the appellant, the correctness of the adjustment given by the respondent vide Annexure A4

statement is being considered by the Hon'ble Court in W.P. no.10935/2017 and the matter is pending. However the claim of the appellant that Rs.27,00,940/-is adjusted against damages is apparently not correct as it seen from annexure A4 (8) that the amount was adjusted against interest U/s 7Q of the Act of various units of the appellant in Kollam jurisdiction. In view of the above, the proceedings initiated by the respondent against the unit of the appellant covered under code No.KR/TVM/1227 for the belated payment of contribution for the period 6/2014 to 7/2018 is legally correct.

6. The only other ground pleaded by the learned Counsel for the appellant in this appeal is with regard to financial difficulties of the appellant establishment. According to the learned Counsel for the respondent, the appellant failed to produce any records regarding the financial constraints before the respondent authority U/s14B of the Act. The appellant failed to produce any documents in this appeal as well. When financial constraints are pleaded as a reason for the delayed payment, it is upto the appellant to establish the same

before the authority U/s 14B of the Act. Having failed to do so, the appellant cannot plead the benefit of financial difficulties for waiver or reduction of damages U/s 14B of the Act. The Hon'ble High Court of Delhi in **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 held that if the appellant failed to produce documents to substantiate the financial constraints and the mitigating circumstances before the 14B authority and also in the appeal, it is not possible to interfere with the findings of the 14B authority.

7. The learned Counsel for the appellant also pointed out that the appellant failed to remit even 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 offence U/s 405/406 Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea in belated remittance of contribution atleast to the extent of employees' share of contribution which amounts to 50% of the total contribution.

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 preferred against an order issued U/s 7Q of the Act.

9. Considering all the facts, circumstances and pleadings, I am not inclined to interfere with the impugned orders.

Hence the appeal against Sec 14B order is dismissed as there is no merit in the appeal. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer