



सत्यमेव जयते

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

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

(Wednesday the 18th day of November, 2020)

APPEAL No.697/2019

Appellant

M/s. Focuz Corporation Pvt. Ltd.,
Mamangalam P.O
PB No. 2222
Edappally
Ernakulam Dist. -682024

By Adv. C.B. Mukundan

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Kochi -682017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on
27/10/2020 and this Tribunal-cum-Labour Court on
18/11/2020 passed the following:

ORDER

Present appeal is filed from order No.
KR/KCH/6467/ Penal Damages /2019/1724 dt. 31/7/2019
assessing damages U/s 14B of EPF & MP Act, 1952

(hereinafter referred to as 'the Act'.) for belated remittance of contribution for the period from 1/4/1996 to 31/3/2019 (excluding certain period in between) The total damages assessed is Rs.11,82,081/-.The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is engaged in the business of sale of automobile spare parts, vehicles and computers. The appellant was regular in compliance. The automobile industry was facing severe financial crisis for quite some time. In view of the financial difficulties there was delay in payment of wages to its employees and consequently there was delay in remittance of provident fund contribution. The respondent issued notice dt. 13/06/2019 alleging delay in remittance of contribution for the period from 04/1996 to 03/2019.The appellant was also give an opportunity for personal hearing. A representative of the appellant appeared before the respondent and filed a detailed reply dt. 24/07/2019 explaining the circumstances that lead to the delayed remittance of contribution. A copy of the reply is produced and marked as Annexure A4. From the notice, it is

seen that the damages is proposed to be assessed for a period as far back as 23 years. In the notice the wage for which delayed payments were made, the dues involved in each such payment, the extend of delay etc were not furnished. In the absence of such details it was not possible to verify the correctness of the statements. There delay in making provident fund contribution was neither wilfull and nor deliberate. In the circular dt. 29/05/1990 from the headquarters of the respondent, it was clarified that the damages U/s 14B included the interest and 7Q also. The Hon'ble High Court of Delhi in **Systems and Stamping Vs EPF Appellate Tribunal**, 2008 LLR 485 directed the respondent to reassess the damages on the basis of the above circular. The respondent has adequate discretion to levy damages, which was not exercised by the respondent in the present case. The Hon'ble High Court of Madhya Pradesh **in APFC Vs. Ashram Madhyamik** , 2007 LLR 1249 held that the respondent has the discretion while levying damages. In **Employees State Insurance Corporation Vs HMT**, 2008 (1) LLJ 814 (SC), the Hon'ble Supreme Court held that only because of a provision has been made for levy of penalty,

the same by itself would not lead to the conclusion that penalty must be levied in all situations. The Hon'ble High Court of Madras in various cases held that there shall be the existence of mensrea to contravene a statutory provision to hold an establishment liable for damages. It is settled legal provision that damages being penal in nature cannot be levied in a mechanical manner.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of provident fund contribution. The delay in remittance will attract damages U/s 14B of the Act read with Para 32A of the EPF Scheme. No appeal against 7Q order is maintainable . A notice was issued to the appellant to show cause why damages U/s 14B of the Act shall not be levied for belated remittance of contribution. The appellant was also given an opportunity to attend a personal hearing on 28/06/2019. A representative of the appellant attended the hearing and submitted a written letter stating that the appellant was under severe financial crisis and delay in payment of provident fund dues was not deliberate. From the reply filed

by the appellant it was very clear that the appellant had no financial difficulties till 2014. From 2014-15 the company was incurring losses as reflected in the documents produced by the appellant. The appellant could not explain the reasons for non remittance of employees share deducted from the salary of the employees. In **Hindustan times Ltd Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court held that the financial condition of a establishment is not a defence for delayed remittance of provident fund contribution. The Hon'ble Supreme Court in the above referred case also held that there is no limitation provided under the Act for levying damages. When there is delay the establishments are indirectly enjoying the amounts that ought to have been paid by the appellant had the assessments be made earlier. U/s 14B of the Act liability of the defaulter arises because of his delay in not depositing the provident fund contribution of his employees on time and in the meanwhile utilizing the same for his own gains. In **MS Road Transport Corporation Vs. Central Board Trust**, EPF, WP(C) 5068/2014 the Hon'ble High Court of Delhi held that the damages claimed under 14B of the Act are in the

nature of penalty and in no case be considered similar to a case of deprivation of property rightfully and lawfully in possession of a person. The appellant has not pleaded any ground other than financial difficulties before the respondent authority. The plea of financial difficulties was also not supported by any evidence. The decision of the Hon'ble High Court of Delhi in **Systems & Stamping Vs EPF Appellate Tribunal** (Supra) and the circular dt. 29/05/1990 are not relevant after amendment of the Scheme. In **Chairman SEBI Vs Sri Ram Mutual Fund**, Civil Appeal Nos. 9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravene of provisions of a civil Act. It was also clarified that the penalty is attracted as soon as contravention of statutory obligation as contemplated by the Act and regulation is established. Hence the intention of the parties committing such violation has become totally irrelevant. In **Organo Chemicals Industries** case 1979 (2) LLJ 416 (SC) the Hon'ble Supreme Court held that even if it is assumed there was loss as claimed, it does not justified the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be

allowed to be linked with the financial position of the establishment, over different points of time. 50% of the contribution deposited represents the employee share which has been deducted from the employees wages and was a trust money with employer for deposit in the statutory fund. The delay in deposit of this part of contribution amount is breach of trust and does not entitle the employer to any consideration of relief.

4. The main ground pleaded by the appellant for delayed remittance of provident fund contribution is that of financial difficulties. The impugned order is very clear that the appellant failed to substantiate their claim of financial difficulties as no documents to support the claim was produced before the respondent. The appellant failed to produce any document even in this appeal to support their claim of financial difficulties. Hence it is not possible to accept the claim of appellant that the delay in remittance of contribution was actually due to the financial difficulties of the appellant establishment. Another ground pleaded in the appeal is with regard to the circular dt. 29/05/1990 and the decision of the Hon'ble High Court of Delhi supporting the

same. The learned Counsel for the respondent rightly pointed out that the above circular and the decision of the Hon'ble High Court of Delhi is no more relevant after amendment of Para 32A of the Scheme. It is very clear that the Hon'ble High Court of Delhi in the above referred case is only referring to the unamended Para 32A and has not considered the amendment that has taken place. Hence the circular dt. 29/5/1990 and decision of Hon'ble High Court of Delhi will not be any support to the appellant. The 3rd ground pleaded by the appellant is that there was no intentional delay in remittance of provident fund contribution. It was also argued that there was no mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, 50% of the total dues pertains to the employees' share of contribution. The employees' share of contribution is deducted from the salary as and when the salary is paid. The appellant has no case that there was delay in payment of wages. The delay in payment of employees' share of contribution deducted from the salary of the employees' is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant

cannot plead that there was no mensrea in delayed remittance of provident fund contribution, atleast with respecting to the employees share of contribution. The learned Counsel for the appellant also pleaded that there was delay of 23 years in initiating the process for assessing damages U/s 14B. As already pointed out the Hon'ble Supreme Court held in **Hindustan Times** case (Supra) that the delay in initiating proceedings U/s 14B will only help the employers, as they will be in a position to use their funds in their business or for their personal purpose. The Hon'ble Supreme Court clarified that there is no limitation provided under the Act for initiating 14B proceedings and therefore no prejudice will be caused because of the delay.

5. Considering all the facts, pleadings and arguments in this appeal, I am not inclined to interfere with the impugned order U/s 14B of the Act.

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 against 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 maintainable against an order issued under Sec 7Q. The Hon'ble Supreme Court held that " On a scrutiny of Sec 7(I) we noticed that the language is clear and unambiguous and it does not provide for an appeal against the determination made under 7Q ". In **District Nirmithi Kendra Vs EPFO**, WP (C) 234/2012 the Hon'ble High Court of Kerala held that no appeal is maintainable, from an order issued under 7Q of the Act.

In view of the above the appeal against the order issued U/s14B is dismissed and the appeal filed against Sec. 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer