



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

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

(Monday the 01st day of March, 2021)

APPEAL No.708/2019

(Old No. ATA. 102(7) 2012)

Appellant : M/s. Anzar Cashew Company,
Arinalloor,
Thevalakkara
Kollam – 691 524

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on
03/02/2021 and this Tribunal-cum-Labour Court on
01/03/2021 passed the following:

O R D E R

Present appeal is filed from Order No.
KR/KLM/16262A/PD/2010-11/3218 dt. 03/10/2011
assessing damages U/s 14B of EPF & MP Act, 1952
(hereinafter referred to as 'the Act') and interest U/s 7Q of the
Act for belated remittance of contribution for the period

03/2007 to 02/2010. The total damages assessed is Rs.1,88,265/-. The appellant has also challenged an order No. KR / KLM /16262A / PD / 2010-11 / 16219 dt. 03/10/2011 assessing damages and interest for belated remittance for the period from 05/2008 to 10/2009.

2. The appellant is engaged in procuring and processing of raw cashew nuts and selling of cashew kernels and related business. The appellant was prompt in compliance. While so the appellant received notices from the respondent alleging delay in remittance of contribution for the period 03/2007 to 02/2010. Delay statement was also enclosed along with the notice. An authorized representative of the appellant appeared before the respondent authority and produced challans for having remitted the contributions. However in the proceedings dt. 6/9/2011 it was recorded by the respondent that the authorized representative of the appellant admitted the liability and requested time for making payment. This is not correct. A true copy of the proceedings dt. 06/09/2011 is produced and marked as Annexure A3. The appellant remitted the interest demanded U/s 7Q in both the orders. The appellant also requested the respondent vide letter dt.

03/10/2011 to waive the damages. A copy of the representation is produced and marked as Annexure A5. Ignoring the above contentions the respondent issued the impugned orders. There was no willful defiance of law or latches on the part of the appellant. The respondent without applying his mind and without examining the matter in the proper perspective issued the impugned orders. The respondent issued two orders on the same day and the period mentioned in one order is already included in the another order and therefore the two orders are passed for the same period which is against law. The appellant is not guilty of any offence and the respondent ought to have taken into consideration the mitigating factors.

3. The respondent filed counter denying the above allegations. The appellant is a branch of M/s. Anzar Cashew Company and is covered under the provisions of the Act under code No. 16262 A. The establishment is a chronic defaulter in remitting provident fund contribution in respect of its employees. The delay in remittance of contribution is deliberate and therefore will attract damages U/s 14B and interest U/s 7Q of the Act. The claim of the appellant that

they were prompt is totally in correct. The appellant establishment failed to remit the contribution from 3/2007 to 2/2010 and 5/2008 to 10/2009 in time. Any belated payment of 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 detailed delay statement showing the date of remittance, the due amount and due date of payment. The appellant was also given an opportunity for personal hearing on 6/9/2011. A representative of the appellant attended the hearing and admitted the liability and also requested for time to remit the damages and interest. The representative of the appellant appeared on 27/9/2011 and promised to pay the damages and interest and produce the challans on 3/10/2011. Since the appellant failed to remit the amount the impugned orders for assessing damages and interest were issued. The damages were levied after due process of law. The delay in remittance of contribution was also admitted by the representative of the appellant. The interest component is required to be credited to the members account and it is a statutory obligation. It is also clarified that the dates mentioned in the two orders are not repetitive. The

appellant had made remittance for the period from 05/2008 to 10/2008 on 12/8/2009 and 25/2/2010. Since the appellant remitted the dues in two installments and damages are calculated on the basis of the date of remittance and there is no overlap as claimed by the appellant.

4. The learned Counsel for the respondent pointed out that the appellant has challenged two orders issued u/s 14B and 7Q in this appeal and the same ought to have been rejected as defective in the first instance. The appellant in this appeal is challenging the orders on the ground that there is overlap of the periods of assessment and to substantiate the same, the appellant has produced both the orders and challenged the same in this appeal. Hence the preliminary objection raised by the counsel for the respondent cannot be maintained.

5. The case of the appellant is that the mitigating circumstances leading to the delay in remittance of provident fund contribution is not considered by the respondent authority. Even in this appeal the appellant failed to disclose the mitigating circumstances that are required to be considered while deciding the quantum of damages. The only

document available is a letter dt.03/10/2011 issued by the appellant addressed to the respondent wherein it was stated that there was huge loss due to hike of processing charges of raw cashew and lack of timely foreign contract for export. It is to be pointed out that even this representation dt. 03.10.2011 is after finalization of the proceedings on 27/9/2011. Hence the claim of the appellant that the mitigating circumstances are not considered by the respondent has no basis. The appellant also claimed that the representative of the appellant produced the copies of challans before the 14B authority. However in Annexure A3 daily proceedings order dt. 06/9/2011 it is clearly indicated that "Shri.Vinod requested for time to make payment as the Chairman is out of the country." There is no recordings in the proceedings that the representative of the appellant produced any records before the respondent authority on the said date. The appellant now disputes these proceedings on the ground that the representative never admitted to make the payment as per the notice. If that be so, it is not clear as to what prevented the representative to point out this anomaly on the date of

hearing when the proceedings was issued to the appellant's representative who attend the hearing.

6. The only ground pleaded by the appellant is that of financial difficulties. When the appellant pleaded financial difficulties it was up to the appellant to produce the records before the respondent to substantiate their claim. The appellant failed to produce any records before the respondent authority. The appellant also failed to produce any document to substantiate their claim of financial difficulties in this appeal. In ***Sree Kamakshy Agency Pvt. Ltd Vs EPF Appellate Tribunal and Another***, 2013 (1) KHC 457 the Hon'ble High Court of Kerala held that " If it is shown in that one was under severe financial difficulties on account of reasons stated and the documents in support of the said fact is produced, the authorities are bound to consider the same in a pragmatic manner and not taking a pedantic approach". The Hon'ble High Court of Delhi in ***M/s. Kee Pharma Ltd.,Vs APFC***, 2017 LLR 871 also held that the employers will have to produce the documentary evidence before the authorities which could reveal that due to mitigating circumstances the appellant establishment was restrained from compliance with

the provisions of the Act in time. The law laid down in the above said decisions are squarely applicable to the present case as the appellant only admitted the liability and agreed to remit the damages before the respondent authority. Having failed to make any contention before the respondent authority, the appellant cannot plead new grounds in this appeal alleging that the respondent did not consider the mitigating circumstances of the appellant. It is further seen that the default is for the period 03/2007 to 12/2009 and the impugned order is issued on 03/10/2011. The appellant by default got more than 10 years to retain the damages and interest amount with him, which in the hands of the respondent organization could have benefitted the poor employees by utilizing the interest earned from the damages amount for providing better benefits.

6. Considering all the facts, pleadings and circumstances in this case, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer