



सत्यमेव जयते

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

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

(Monday the 20th day of December, 2021)

APPEAL No.729/2019
(Old No. ATA 317(7)/2012)

Appellant

M/s. Kallumadiyil Enterprises (P) Ltd
Hotel Bassota International,
Near Y.M.C.A
Thiruvalla ,
Pathanamthitta District-689 533..

By Adv. C.M. Stephen

Respondent

The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on
03/09/2021 and this Tribunal-cum-Labour Court on 20/12/2021
passed the following:

ORDER

Present appeal is filed from notice No. KR / TVM / Circle:17
/ Damages / KR /22554 / CA /12784 dt. 19/01/2012 directing
the appellant to attend a hearing before the respondent authority on
06/02/2012 at 10.30 AM U/s 14B of EPF & MP Act, 1952

(hereinafter referred to as 'the Act'.) for assessment of damages for belated remittance of contribution for the period from 02/2007 to 01/2012.

2. The appellant is a Private Limited Company, incorporated under the Company's Act 1956. A true copy of the certificate of incorporation is produced and marked as Annexure A2. The appellant is covered under the provisions of the Act with retrospective effect. The appellant was regular in compliance. The copies of challans evidencing payment of contribution for the period commencing from 02/2007 to 01/2011 is produced and marked as Annexure A3 series. True copies of the monthly returns filed by the appellant for the same period is produced and marked as Annexure A4 series. The impugned order issued by the appellant is without any notice to the appellant and therefore is in violation of principles of natural justice. The appellant was not summoned for proceedings on 17/02/2012 nor on any other day. However the appellant received a communication by post which is produced as Annexure A5. While issuing the impugned order the respondent authority did not consider Annexure A3 series of challans and Annexure A4 series of returns. The respondent failed to notice that damages U/s 14B of the Act does not envisage mandatory levy of damages.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 02/2007 to 01/2011. Belated payment of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a show cause notice dt. 19/01/2012 advising the appellant to appear before the respondent authority on 08/02/2012 was issued to the appellant. None appeared before the respondent. No representation was also received from the appellant establishment seeking adjournment of the proceedings. The appellant also failed to submit any documents with regard to the delay statement enclosed along with the notice dt. 19/01/2012. Since the appellant had no objection, the respondent authority issued order No. KR/22554/ TVM /PD/VK /2012/13974 dt.17/02/2012. The order issued by the respondent is in accordance with law. The appellant failed to avail the opportunity provided to him before the impugned order is issued. The appellant even failed to remit the contributions deducted from the salary of the employees in time. Hence they cannot plead that there was no deliberate delay in remittance of contribution.

4. The appellant herein challenged a notice dt. 19/01/2012 issued to him U/s 14B of the Act to appear before the respondent authority on 06/02/2012 at 10.30 a.m to assess damages and

interest for belated remittance of contribution for the period from 02/2007 to 01/2011. Since it is only a notice and is not a final order, the appeal can be dismissed on that ground alone. However it is seen that the appellant also filed the final order issued U/s 14B of the Act dt.17/02/2012. Hence the appeal is considered on merit.

5. The appellant establishment is covered under the provisions of the Act . There was delay in remittance of contribution for the period from 02/2007 to 01/2011. Hence the respondent issued notice to the appellant along with a detailed delay statement showing provident fund dues, the due date of payment, the actual date of payment, delay in remittance and proposed damages and interest. The appellant did not attend the enquiry on 06/12/2012 and no objection was also filed regarding the delay statement send alongwith the notice. The respondent authority therefore concluded the enquiry on the basis of the proposed damages in the Annexure A1 notice.

6. The main contention in this appeal is that no notice was issued to the appellant before the assessment order. As already pointed out Annexure A1 is a notice issued to the appellant directing him to attend the enquiry on 6/12/2012 enclosing therein a detailed delay statement. Hence there is no basis in the contention of

the appellant that no notice was issued by the respondent before issuing the impugned order. The 2nd contention raised by the appellant is that the remittances were made in time and there is no delay as alleged by the respondent. The appellant produced Annexure A3 series of remitted challans as A3 and A4 series of returns filed by the appellant. On a perusal of Annexure A3 series of challans, it can be seen that there is indeed delay in remittance of contribution. Hence the claim of the appellant that there was no delay in remittance of contribution is without any basis. The third ground pleaded by the appellant is that there was no intentional delay in remittance of contribution. The learned Counsel for the respondent pointed out that the appellant even failed to remit the employees share of contribution deducted from the salary of the employees in time. Non-payment of employees share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405 & 406 of Indian Penal Code.

7. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act . In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPF**, 2014 (15) SCC 263 and **Assistant PF**

Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd,
2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

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 RPFCL**, 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

prefer against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in **St. Mary's Convent School Vs APFC**, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

9. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/~

(V. Vijaya Kumar)
Presiding Officer