



BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL~CUM~LABOUR COURT, ERNAKULAM

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

(Thursday the 14th day of April, 2022)

APPEAL No.759/2019

(Old No. ATA 376(7) 2012)

Appellant

M/s Indroyal Crafts Private Limited
T.C 2/2465 (5), Royal Plaza,
Pattom P.O.,
Thiruvananthapuram – 695 004.

By Adv. M. Gireesh Kumar

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
24/03/2022 and this Tribunal-cum-Labour Court on
14/04/2022 passed the following:

ORDER

Present appeal is filed from order No. KR/
22925/TVM/PD/VK/2012/14334 dt. 12/03/2012 dt.
03/10/2013 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 03/2010 to 02/2011. The total damages assessed is Rs. 99,783/-.

2. The appellant is a company incorporated under the provisions of Companies' Act 1956, engaged in the manufacturing of wooden furniture. The appellant is covered under the provisions of the Act. The respondent issued notice U/s 14B and 7Q alleging that there was delay in remittance of contribution for the period from 03/2010 to 02/2011. Alongwith the notice the details of the delay was also furnished. A copy of the notice along with the statement is produced and marked as Exbt A1. The appellant was also giving an opportunity for personal hearing on 03/03/2012. A representative of the appellant attended the hearing and filed their objections. It was pointed out that the delay occurred due to financial constrains and also due to the set back in the furniture industry. The salary of the employees was also delayed. There was no willful latches on the part of the appellant in delayed remittance of contribution. Ignoring the contentions of the appellant, the respondent issued the impugned order. The appellant is not a chronic defaulter. The respondent ought to have given time for production of records. The respondent failed to exercise its

discretion available U/s 14B of the Act. The respondent ought to have taken into consideration the length of delay and the loss of interest suffered by the organization before quantifying the damages.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. There was delay in remittance of contribution for the period from 03/2010 to 02/2011. Any delay in remittance of contribution will attract damages U/s 14B. Hence a showcause notice dt. 09/01/2012 was issued to the appellant along with a detailed delay statement. The appellant was also given an opportunity for personal hearing on 03/02/2012. The appellant, vide Exbt A2, replied that the delay occurred due to financial constrains. It is settled position of law that financial difficulties by itself cannot be a ground for reducing or waiving damages, unless it is established beyond reasonable doubt that the appellant could not pay the wages to its employees due to the financial constrains. The delay in remittance of contribution was known to the appellant. Further the same was also communicated to the appellant through Exbt. A1 statement. The appellant did not raise any dispute regarding

the statement, thereby admitting the delay in remittance of contribution. On a perusal of Exbt A1 statement it is clear that there is huge delay in remittance of contribution. In **Elston Cotton Mills Vs RPFC 2001 (1) SCT** the Hon'ble High Court of Punjab and Haryana (DB) has held that poor financial capacity is not a ground for not paying provident fund contribution of the employees who are also poor persons.

4. The assessment order demanding interest U/s 7Q cannot be challenged in an appeal U/s 7(I) of the Act .

5. The appellant delayed remittance of contribution for the period from 03/2010 to 02/2011. The respondent authority, therefore, initiated action for assessing damages and interest. Respondent authority issued notice alongwith a detailed monthwise delay statement. The appellant was also given an opportunity for personal hearing. The appellant filed Exbt A2 representation before the respondent authority. As per Exbt A2, the delay in remittance of contribution is admitted but it is stated that the delay was due to financial constrains. It was also stated that there was delay in payment of wages to the employees. The respondent authority issued the impugned orders taking into account the submissions made by the appellant establishment .

6. In the present appeal, the appellant has pleaded that financial constraints as a reason for delayed remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to establish the financial difficulties before the respondent authority. The appellant failed to produce any documents in this appeal also to substantiate their claim of financial difficulties.

7. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B **if the appellant pleads and produces documents to substantiate the same.** In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

8. According to the appellant, the delay was not intentional and there was not willful latches or omissions on the part of the appellant in delayed remittance of contribution. The appellant also claimed that there was delay in payment of wages. The appellant failed to substantiate the delayed payment of wages also in this appeal and therefore the claim cannot be accepted. The question whether the intention in delayed remittance of contribution is relevant was considered by the Hon'ble Supreme Court in a recent decision. 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 RPFC**, 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”

9. 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 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.

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

Hence the appeal is dismissed.

Sd/~

(V. Vijaya Kumar)
Presiding Officer