



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

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

(Wednesday the 27<sup>th</sup> day of October, 2021)

**APPEAL No.760/2019**  
(Old No. ATA No.361 (7)2012)

Appellant : M/s. Naveen Associates  
Door No. 10 & 11,  
Kozhikode Public Library and  
Research Centre Building,  
Mananchira,  
Kozhikode – 673 001.

By Adv C.N. Sreekumar &  
Adv. U.K. Devidas

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Eranhipalam  
Kozhikode – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for final hearing on  
26/07/2021 and this Tribunal-cum-Labour Court on  
27/10/2021 passed the following:

## **ORDER**

Present appeal is filed from Order No. KR/ KK/ 23864 / Enf-III (2) / 2011-12/ 4925 dt. 01/02/2012 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 03/2009 to 03/2010. The total damages assessed is Rs. 2,13,583/-. The interest demanded U/s 7Q for the same period is also being challenged in this appeal.

2 The appellant is a partnership firm engaged in supplying manpower to various establishments. The appellant partnership came into existence in 2009 and applied for PF code number in 2009 itself. The respondent delayed the allotment of code number for remittance of contribution and the code number was allotted only on 12/03/2010. A copy of the coverage memo issued on the report dt. 12/03/2010 is produced and marked as Annexure 1. The respondent is covered under the provisions of the Act w.e.f 02/02/2009 in

12/03/2010. The appellant remitted the contribution immediately on the receipt of the code number. The appellant is regular in compliance thereafter also. There is no laches or negligence on the part of the appellant. The appellant was served with a show cause notice dt. 14/01/2012 U/s 14B of the Act, for the belated remittance of the contribution for the period from 03/2009 to 03/2010. A true copy of the notice issued which is produced and marked as Annexure A2. The appellant was also given an opportunity for personal hearing on 10/01/2012. A representative of the appellant attended the hearing and pointed out that the appellant is not liable to pay any damages since the delay was caused due to the failure of the respondent to issue the code number in time. Ignoring the contentions of the appellant, the respondent issued the impugned order. Copies of the orders are produced and marked as Annexure 3 & 4.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under

the provisions of the Act. Any delay in remittance of contribution will attract damages U/s 14B and interest U/s 7Q of the Act. Since there was delay in remittance of contribution for the period from 03/2009 to 03/2010, the respondent issued a notice to the appellant U/s 14B of the Act to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing on 10/01/2012. A representative of the appellant attended the hearing. He informed the respondent authority that the application for coverage of the establishment under the Act was preferred during June 2009 but the code number was received only during March 2010. He further requested that while assessing damages and interest the issue shall also be considerable. On verification of the file it is seen that the claim of the appellant that they requested for allotment of code number in June 2009 is not correct. There is no such request available in the file.

The appellant also did not raise any objection regarding the delay statement forwarded alongwith the summons. On the basis of the returns filed by the appellant and details of remittance on record, it is seen that there was delay in remittance of contribution for the period from 02/2009 to 03/2010 and therefore the appellant is liable to pay damages and interest. The claim of the appellant that there was delay in allotment of code number which delayed remittance of contribution is not correct. The appellant is liable to remit contribution once the establishment become coverable under the provisions of the Act, irrespective of the fact whether any code number is allotted or not. **In Associate Industries Pvt. Ltd Vs RPFC**, 1963 (2) LLJ 652 the Hon'ble High Court of Kerala held that the employers are under legal obligation to deposit their share of contribution to the fund within the time prescribed, the moment the Act and Schemes become applicable to them, and no intimation or notice of anything in that respect was necessary to be issued by the authorities

concerned. In **PF Inspector Vs Ramkumar** , 1983 LAB IC 717 (P&H) the Hon'ble High Court Punjab & Haryana held that the PF Act comes into operation by its own force and its operation is not dependent on any decision taken by the authority under the Act . In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 the Hon'ble High Court of Kerala held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that wages have been paid or not.

4. The appellant establishment is covered under the provisions of the Act by the respondent vide Annexure 1 coverage memo dt. 12/03/2010 covering the establishment w.e.f 02/02/2009. According to the appellant they requested for allotment of code number in June 2009 and the same was allotted to them only 12/03/2010. The learned Counsel for the respondent vehemently opposed the claim of the appellant that they applied for code number in the month of June and there was delay in allotment of code number. According to him

there is no request from the appellant for allotment of code number in the file maintained in the office of the respondent. The appellant also did not produce any such request given to the respondent authority. Apart from the above contentions the question is whether allotment of code number has got any relevance for compliance under the provisions of the Act. There are provisions under the Act and also Schemes which mandate that a code number shall be allotted to the establishments which are coverable under the provisions of the Act. The respondent however allots code number for administrative convenience and also for monitoring compliance from the establishment. It is a settled legal position that EPF & MP Act 1952 comes into operation by its own vigor and its operation is not dependent on any decision taken by the authority under the Act. The Hon'ble Supreme Court of India in **Naseena Traders Pvt Ltd Vs RPFC**, 1996 (1) LLJ 334 held that the notification extending the provisions of the Schemes to an establishment attracts the liability and not the service of the

notice on the employer, that has this effect. It is an absolute and unqualified liability not depending on the vigilance of the department or on the will of the employer to make workmen members of the Scheme. Hence it is clear that the claim of the appellant that the delay in allotment of code number delayed the remittance of contribution, cannot be legally accepted.

5. The appellant was under a bonafide belief that the appellant will not be in a position to remit provident fund contribution unless a code number is allotted to them. Indeed there was delay in allotment of code number to the establishment. As per Annexure 1 coverage memo the code number is allotted on 12/03/2010 making the appellant liable to remit contribution from 02/02/2009. The alleged delay in remittance is covered by the above period. It is seen that the delay in remittance varies from 105 to 457 days. As the appellant was aware of its statutory obligation, the appellant ought to have been deducting the employees' share of contribution from the salary paid to the employees. The



appellant was withholding the employees' share of contribution with him for such a long period.

6. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 80% of damage assessed U/s 14B of the Act.

7. 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. 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.

Hence the appeal against Sec. 14B order is partially allowed, the impugned order is modified and the appellant is direct to remit 80% of the damages. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer