



सत्यमेव जयते

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

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

(Thursday the 28th day of April, 2022)

APPEAL No.780/2019

Appellant

M/s. Dafo Industries Pvt. Ltd
No.7/527F, IGC KSIDC
Balussery, Kozhikode – 673 612.

By Adv. K. Pramod

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 13/04/2022 and this Tribunal-cum-Labour Court on 28/04/2022 passed the following:

ORDER

Present appeal is filed from Order No. KR / KKD / 1727730 / 000 / Enf-1(2) / DAM / 2019 /3697 dt. 15/10/2019 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 02/2017 to 02/2019 (Remittance made from 01/2/2017 to 30/07/2019). The total

damages assessed is Rs.1,89,921/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. Appellant is an establishment incorporated in 2012, involved in the manufacture of furniture using rubber wood. The appellant approached the respondent organization for the purpose of coverage under the provisions of the Act. The appellant was covered with retrospective effect from 2017 vide order dt. 13/05/2018. A true copy of the same is produced and marked as Annexure A1. Appellant was regular in compliance. The appellant received a notice dt. 23/08/2019 from the respondent directing the appellant to show cause why damages and interest as proposed therein shall not be levied for belated remittance of contribution. A copy of the notice is produced and marked as Annexure A2. The appellant appeared through its authorized representative before the respondent. A written objection was also filed, a copy of which is produced and marked as Annexure A3. The appellant establishment immediately after coverage under the provisions of the Act was affected by floods in the state of Kerala in 2018. The roof of the manufacturing plant collapsed and the production of the appellant came to an absolute stopped. Even after restoration of the plant, the

manufacturing could not start due to non-supply of raw materials. The appellant establishment is still under financial constraints caused due to the natural disaster. The appellant establishment was covered retrospectively with effect from 01/02/2017 in May 2018. The appellant was compelled to remit the contributions for the said period. The above positions was explained to the respondent authority during the course of hearing. However the respondent authority issued the impugned order, ignoring the contentions of the appellant. A copy of the order assessing damages is produced and marked as Annexure A4. A copy of the order demanding interest U/s 7Q is produced and marked as Annexure A5. The impugned order is non-speaking order. In **Telephone Industries Vs Assistant PF Commissioner**, 2006 (3) KLJ 698 the Hon'ble High Court of Kerala held that for every delay in remittance of contribution, damages will not be attracted. The respondent authority failed to consider the mitigating circumstances pleaded by the appellant.

3. Respondent filed Counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant delayed remittance of contribution for the period 02/2017 to 02/2019. Hence a notice was issued to the appellant to show cause why damages as

envisaged U/s 14B of the Act should not be recovered. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing on 03/10/2019. A representative of the appellant attended the hearing on 07/08/2019. He admitted the delay, however pleaded that it was due to financial problems. After taking into account the representation, the respondent issued the impugned order. The appellant establishment is liable to remit contribution as per Sec 6 of the Act and also the Scheme provisions. The remittance of contribution in time is a statutory obligation which cannot be waived by the respondent authority. In **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982, KLT 303 the Hon'ble High Court of Kerala held that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not. The appellant himself submitted that he has employed to 20 employees as on 01/02/2017. However, he failed to register himself under the provisions of the Act in time Hence delay in getting a code number will not help the appellant in anyway. The appellant establishment registered itself on OLRE Portal on 30/05/2018 and took the registration on his own. However they

started compliance only from 10/11/2018, ie; after 15 months of due date of coverage delay and 6 month after registration.

4. The appellant establishment delayed remittance of contribution for the period from 02/2017 to 02/2019. The delayed remittance of contribution attracts damages U/s 14B of the Act and interest U/s 7Q. The respondent therefore issued a summons dt. 23/08/2019 along with a detailed delay statement. A representative of the appellant attended the hearing and filed Annexure A3 objection dt. 01/10/2019. The basic contention in the reply was with regard to the financial constraints, retrospective coverage and also that the delay in remittance was not willful. The respondent authority after affording an opportunity for personal hearing, issued the impugned orders.

5. In this appeal the learned Counsel for the appellant re-iterated its position before the respondent authority. According to the learned Counsel for the appellant the appellant establishment was retrospectively covered with effect from 01/02/2017 on 30/05/2018. Hence the appellant was forced to remit both the contributions since the employees' contribution for the retrospective period was not deducted from the salary of the employees. The learned Counsel for the respondent pointed

out that the appellant registered their establishment on the online portal and they furnished the data that the appellant commenced their operations with effect from 01/02/2017. The allotment of code number online is an automatic process and if there is any delay in taking registration under the Act, the appellant only can be held responsible for the same.

6. The learned Counsel for the appellant also pleaded that there was no intentional delay or mensrea in belated remittance of contribution.

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 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”.

8. The learned Counsel for the appellant also argued that the delay in remittance of contribution was due to the financial constrains of the appellant establishment due to the floods in 2018. The learned Counsel for the respondent pointed out that the appellant failed to produce any documents to substantiate their claim of financial difficulties before the respondent authority or in this appeal.

9. 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.

10. 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.

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

Hence appeal against Sec 14B order dismissed on merit. The appeal against 7Q order is dismissed as not maintainable.

Sd/~

(V. Vijaya Kumar)
Presiding Officer