



सत्यमेव जयते

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

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

(Thursday the 27<sup>th</sup> day of January, 2022)

**APPEAL No.791/2019**

Appellant

M/s. Food corporation of India  
Alappuzha – 688 012

By Adv. Manju Rajan

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kochi -682017.

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 13/10/2021 and this Tribunal-cum-Labour Court on 27/01/2022 passed the following:

**ORDER**

Present appeal is filed from order No. KR/KCH/3596/ Damages Cell / 2019 / 7170 dt. 29/08/2019 communicating the revised damages and interest U/s 14B and 7Q of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) for the belated remittance of contribution for the period 02/1994 to 06/2013. The total damages assessed is Rs.27,473/-. The

interest, Rs. 33,926/- demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant received two summons U/s 14B for appearing before the respondent U/s 14B of the EPF and MP Act and order for payment of interest U/s 7Q for belated remittance of contribution for the period 01/04/1996 to 31/03/2014. The copy of the summons along with the statement showing the amount payable U/s 7Q and 14B is produced and marked as Annexure 1 to Annexure 3 respectively. The respondent thereafter summoned the appellant for personal hearing on 06/01/2015. The appellant submitted a written statement dt. 05/01/2015 substantiating the genuine reasons for belated remittance. True copy of the letter dt.14/01/2015 is produced and marked as Annexure 4. However the respondent issued the order dt. 31/11/2015 assessing damages and interest. The copies of the orders are produced and marked as Annexure A5 & A6 respectively. The appellant filed a letter dt.16/02/2016 stating that except on few occasions where payment were delayed due to non-accessibility of the website of EPFO, all other payment were made within the mandatory period of 15 days from the date, the wages has been paid or has become payable. The monthwise details were also enclosed along with the letter. The true

copy of the letter dt. 16/02/2016 is produced and marked as Annexure 7. Without giving any reply to Annexure A7 letter the respondent initiated recovery action. A copy of the recovery notice is produced as Annexure 8. The appellant vide its letter dt. 04/01/2017 requested the respondent to withdraw the recovery proceedings. True copy of the letter dt. 04/01/2017 is produced and marked as Annexure 9. The respondent thereafter issued an order reducing penal damages U/s 14B to Rs.27,473/- and interest U/s 7Q to Rs.33,926/- for belated remittance of contribution for the period 02/1994 to 06/2013. It is stated in the order that on verification of the challans and bank statement submitted by the appellant it has been observed that there is no delay in remittance for the months 05/2010, 03/2010 , 09/2010 and 12/2012. The true copy of the impugned order dt.29/08/2019 is produced and marked as Annexure 10. By the above order the respondent confirmed the delay in payment of certain periods, though the appellant explained the genuine reasons for the same. For the month of 06/2013 & 03/2013 the reason for short delay in payment was that EPF server was unavailable for remittance and the appellant have also informed the respondent regarding the same. For the month 01/2013 the remittance was made on 19/01/2013. For the months 10/2012, 05/2012, 04/2012 and 03/2012 the bank has

not accepted the manual challan since their systems were not updated with new software. For the months 08/2012, 07/2012, 06/2012, 05/2012 and 04/2012 the workers were under strike and salary was claimed for those months. For the month of 03/2010 the workers were on continuous leave and arrears of salary for 03/2010 was claimed during 06/2010. A separate statement tabulating the reasons is produced and marked as Annexure 11. The appellant submits that there was no intentional or wilful delay on their part. The delay in remittance was due to the reason beyond the control of the appellant. U/s 14B of the Act penalty can be imposed only in cases of habitual default. There was no culpable delay or omission on the part of the appellant. The respondent failed to exercise its discretion available U/s 14B of the Act. The Hon'ble High Court of Kerala its judgment in 2006 (3) KLJ 698 held that for belated remittance of provident fund dues liability to pay damages does not rise automatically. It is a settled legal position that mensrea or actusreus is a relevant ground while deciding the quantum of damages U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. Present appeal is filed against Annexure 10 letter dt. 29/08/2019 issued by the respondent intimating the appellant

that the amount assessed U/s 14B and 7Q of the Act vide order dt. 28/01/2016 were re-calculated, as on verification of the challans and banks statements subsequently it was observed that there was no delay in remittance of contribution for the months 05/2010, 03/2010, 09/2010 and 12/2012. Hence the original levy order is modified reducing the liability of penal damages and interest for the said period. Present appeal is filed against Annexure 10 letter dt. 29/08/2019. Sec 7(I) of the Act allowed appeal only against an order issued U/s 14B of the Act and as such no appeal against any letter issued by the respondent can be entertained by this Tribunal. Hence the appeal is to be dismissed on the preliminary ground itself.

4. The respondent noticed that there was delay in remittance of contribution by the appellant for the period from 02/1994 to 6/2013. The respondent therefore issued summons dt. 10/10/2014 directing the appellant to appear before the respondent. A detailed delay statement was also sent along with the summons. Representative of the appellant attended the hearing on 06/01/2015. Finding that there was delay, the respondent authority issued the order dt. 28/01/2016 assessing Rs.31,521/- U/s 14B towards damages and Rs.39,726/- U/s 7Q towards interest. The

appellant through letters dt. 16/02/2016 and 04/01/2017 elaborated the reasons for delay. Considering the same and based on the challans and bank statement the amounts assessed vide levy order were re-calculated and quantified, as there was no delay in remittance of provident fund contribution for the months 05/2010, 03/2010, 09/2010 and 12/2012. Accordingly the Annexure 10 letter dt. 29/08/2019 was issued to the appellant reducing the damages and interest. The respondent authority after examining the entire aspects for default concluded that the appellant failed to remit the dues inspite of the fact, it is the responsibility of appellant to remit dues within 15 days of close of every month. It was also found that there was mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of a civil Act. The respondent authority noticed that the facts and circumstances leading to the belated payment of statutory dues were solely within control of the appellant. The decision of Hon'ble High Court of Kerala in **Indian Telephone Industries Vs APFC**, 2006 (3) KLJ 698 was appealed against by the Assistant PF Commissioner in Writ Appeal No. 2182/2006 before the Division Bench and the Division Bench vide its judgment dt.28/08/2008 modified the said judgment

of the single bench and directed the Central Board of Trustees to consider the application for waiver of damages. The Hon'ble Division Bench also clarified that the decision of the single bench is not sustainable for the reason that the declaratory relief granted by the learned single judge in the writ petition is impermissible in law. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 held that the reason for the introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds, most often with the ulterior motive of mis-utilizing not only thereon but only the employees contribution .

5. According to the records maintained by the respondent office they found that there was delay by the appellant in remitting the contribution for the period from 01/02/1994 to 31/06/2014. The respondent therefore initiated action by issuing summons for assessment of damages and interest. A detailed delay statement was also forwarded along with the summons. A representative of the appellant attended the hearing. The respondent issued 2 separate order in Annexure 5 assessing damages U/s 14B and Annexure 6 demanding interest U/s 7Q. The appellant through various representations pointed out the reasons for delay. The respondent

authority after verifying the challans and banks statements found that for the months 05/2010, 03/2010, 09/2010 and 12/2012 the appellant remitted the contribution in time and therefore revised the order through a letter dt. 29/08/2019. It is a composite letter reducing both damages and interest assessed vide order dt. 25/01/2016. The said letter is being challenged in this appeal.

6. The learned Counsel for the respondent submitted that as per Sec 7(I) of the Act, only an order issued U/s 14B of the Act can be challenged in the appeal. Since Annexure 10 is only a letter, the same cannot be challenged in a appeal U/s 7(I) of the Act. I am not in a position to agree with the argument of the learned Counsel for the appellant. The respondent has issued 2 separate orders U/s 14B and 7Q of the Act. Later, on the basis of the representations filed by the appellant and also on the basis of the evidence available, the respondent authority decided to reduce the quantum of damages and interest. It ought to have been appropriate if the order U/s 14B and 7Q itself were modified by the respondent. Instead of doing that the respondent authority chose to issue Annexure 10 letter reducing damages and interest. Hence it is not fair to hold that the Annexure 10 letter cannot be challenged in an appeal U/s 7(I). The Annexure 10 letter is infact a modification of Sec 14B order issued by the

respondent authority. Hence the appeal against Annexure 10 letter is maintainable.

7. The learned Counsel for the appellant pointed out that the respondent authority failed to consider the genuine grounds pleaded by the appellant during the course of 14B proceedings. The learned Counsel for the appellant elaborately explained the reasons for delayed remittance during certain periods. According to her, for some period the delay was due to the reason that the EPF Server was down and some period it was due to the fact that the bank refused to accept manual challans. For some period it was pointed out the delay was due to the fact that there was strike in the appellant establishment and for one month in March 2010, the workers were on continuous leave and salary was paid only during 06/2010. The learned Counsel for the respondent denied the fact that the EPF server was down for so many months as the contribution in respect of lakhs of establishments were remitted through the system during the relevant point of time. After introduction of the e-remittance by the respondent organization the banks are not supposed to receive any manual challan and the same was communicated to all establishments in advance. Hence the appellant cannot take the plea of banks not accepting manual

challans during the challans 03/2010 to 10/2010. With regard to the delay in remittance during the strike by the employees, the learned Counsel for the respondent pointed out as per Para 38 of EPF Scheme the appellant is liable to remit both employer and employee contribution, irrespective of the fact whether salary is paid or not, within 15 days of the close of every month. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) 416 interpreting of Para 38 of EPF Scheme held that

“ Para 33. The initial responsibility for making contribution of the employer as well as the employees, lies on the employer. Para 30 of the Scheme makes its incumbent on the employer that he shall in the first instance pay both the contribution payable by himself and also on behalf of the member employed by him. Under Para 38, the employer is authorized, before paying the member employees wages in respect of any period or part of period for which contributions are payable, to deduct the employees contribution from his wages. It further provides that the deposit of such

contribution shall be made by the employer within 15 days of the close of every month, ie; a contribution for particular month has got to be deposited by 15<sup>th</sup> day of the month following. A breach of any these requirement is made a penal offence”.

It is clear from the above judgment of the Hon'ble Supreme Court that the appellant establishment cannot plead that the salary of the employees were paid belatedly due to strike by employees and therefore they are not liable to remit the contributions in time. It is clear from the pleadings of the appellant as well as the respondent that the appellant establishment cannot escape the liability to pay damages for belated remittance of contribution for the reasons stated in this appeal.

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

9. 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”

10. The learned Counsel for the respondent pointed out that the interest demanded U/s 7Q of the Act cannot be challenged in an appeal U/s 7(I) of the Act .

11. 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 the appeal is dismissed.

Sd/-

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