



सत्यमेव जयते

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

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

(Thursday the 8th day of April, 2021)

Appeal No.256/2018

(Old No. A/KL-34/2017)

Appellant : M/s. Lots Shipping Ltd.,
O S 34, GCDA Complex,
Marine Drive,
Kochi- 682031.

By Adv. C.B.Mukundan

Respondent : The Regional PF Commissioner
EPFO, Sub-Regional Office
Kaloor,
Kochi – 682 017.

By Adv. S. Prasanth

This appeal came up for hearing on 05/03/2021 and this Industrial Tribunal cum Labour Court issued the following order on 08/04/2021.

ORDER

Present appeal is filed from Order No. KR/ KCH / 19798/ Damages / SCN / 2016-17 /16860 dt. 23/02/2017 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 04/2012 to

to 12/2014. The total damages assessed is Rs. 6,95,173/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a Company duly incorporated under Company's Act 1956. The appellant is dealing with Shipping and Logistics. Due to the fact that Company's vessels were seized by the borrowers and lenders and because of the frequent repairs due to saline conditions of the existing operational vessels, the revenue of the company has gone down. Because of this the payment of wages and salaries were also delayed. The financial situation of the appellant establishment is very bad for the last 10 years. There was delay in remittance of provident fund contribution during the relevant period because of the financial difficulty. There was no willful omission on the part of the appellant. The impugned orders issued by the respondent are not legally sustainable as the submissions made by the appellant were not at all considered by the respondent. The financial difficulties pleaded before the respondent authority were not considered while quantifying the damages U/s 14B of the Act. The finding of the respondent that damages U/s

14B is mandatory in all circumstances is not supported by legal authorities. If the appellant is compelled to pay damages and interest imposed by the respondent, the appellant company will have to be closed down. The respondent failed to exercise his discretion vested U/s 14B of the Act and Para 32A of EPF Scheme. The impugned orders are issued without any application of mind. There is an error apparent on the face of the record because the respondent issued another order U/s 14B assessing damages and interest for the period from 05/2014 to 10/2015 wherein the periods for assessment of damages overlapped. The appellant assumed mensrea in respect of delayed payment without considering the defense taken by the appellant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant defaulted in payment of contribution for the period from 04/2012 to 12/2014. Belated remittance of statutory dues will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent therefore issued a notice

dt.10/09/2015 to the appellant to show cause with documentary evidence as to why penal damages shall not be levied for belated remittance of contribution. A detailed delay statement showing the month wise details of remittance along with due date of remittance, actual date of remittance, and also the delay was forwarded to the appellant alongwith the notice. The appellant was also given an opportunity for personal hearing on 28/09/2015. The enquiry was adjourned to various date as the appellant failed to attend the hearing. Finally the representative of the appellant attended the hearing on 22/02/2016. The appellant admitted the delay and did not raise any further contentions before the respondent authority. The contention of the appellant that he is entitled for relief because of the financial constraints is not supported by legal authorities. In ***Hindustan Times Vs Union of India***, 1998 (2) SCC 242 the Hon'ble Supreme Court held that financial constraints cannot be a justifiable ground for the employer to escape the liability U/s 14B. The mere financial difficulties or pleadings that salaries is not paid to the employees in time will not help the appellant unless the same is substantiated

through evidence. The appellant cannot ignore its statutory liability under Para 30 & 38, according to which the appellant is liable to pay both the contributions within 15 days of close of every month. Any delay in remittance will attract damages U/s 14B of the Act. In ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416, the Hon'ble Supreme Court held that the very purpose of 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-utilization not only their own but also employers contribution. In ***Calicut Modern Spinning Weaving Mills Vs RPFC*** 1981(1) LLJ 440 the Hon'ble High Court of Kerala held that the failure to make contribution resulting in default will have to be vested by damages U/s 14B of the Act. In ***Sky Machinery Ltd Vs RPFC***, 1998 LLR 9825 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient ground for waiving damages U/s 14B of the Act. In ***Chairman SEBI Vs Sri Ram Mutual Fund*** AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provision of a Civil Act

and penalty is attracted as soon as contravention of statutory obligation as contemplated by the Act is established and therefore the intention of parties committing such violation becomes immaterial. The Hon'ble Supreme Court in ***Maharashtra State Co-operative Bank Limited Vs APFC, (2009) 10 SCC 123*** held that any amount due from an employer has to be interpreted keeping in view the liability of the employer to pay interest and damages if there is default in making contribution to the fund.

4. The order issued U/s 7Q of the Act is not appealable as there is no provision U/s 7(I) of the Act to prefer an appeal against an order issued U/s 7Q.

5. The main contention by the learned Counsel for the appellant for belated remittance of contribution is financial difficulties. According to the learned Counsel for the respondent the appellant made no such claim before the 14B authority and the same shall not be considered in an appeal proceedings. Though the learned Counsel argued that there was delay in payment of wages the appellant failed to produce any document to substantiate their claim in this appeal also. To substantiate the financial difficulties

the appellant produced the balance sheets of the appellant establishment for the yrs 2012-13 to 2014-15. On a perusal of the balance sheet for the year ending 31/03/2013 it is seen that the appellant had a revenue income 7.48 crores and the employee benefit expenses for the year was Rs.2,14,68,090/-. The loss reflected for the year is Rs. 3,03,58,682/-For the year 2013-14 the revenue income of the appellant is Rs. 6.26 crores and the employee benefit expense is Rs. 1.95 crores. The loss reflected in the balance Sheet is Rs.1,93,63,046/-. For the year ending 31/03/2015 the revenue income is Rs.4.87 crores and the employee benefit expenses is Rs.1.85 crores. The reported loss for the year is Rs.1,06,99,603/-. It can be seen from the documents produced that the appellant was having a huge revenue income during the relevant point of time. It can also be seen that the wages of the employees is generally paid in time. It is further seen that the appellant establishment was running under loss during the relevant point of time. The learned Counsel for the respondent pointed out that the figures reflected in the balance sheet cannot be relied upon to decide the financial position of the appellant

establishment. In ***Aluminium Corporation Vs Their Workmen***, 1964 (4) SCR 429 SC the Hon'ble Supreme Court held that the mere statement in the balance Sheet as regards current assets and current liabilities cannot be taken as sacrosanct. Further the correctness of the figures as shown in the balance sheet itself are to be established by proper evidence before the authority concerned. In this case the appellant has not only failed to substantiate the figures in the balance sheet but also failed to raise the issue of financial difficulties before the respondent authority. The learned Counsel for the appellant argued that there was duplication in assessment for previous and subsequent periods. According to the learned Counsel for the respondent there is no duplication in period of assessment and the assessment for a particular period is done on the basis of the date of remittance. When the date of remittance are difference the quantum of damages also will change depending on the number of days by which the remittance is delayed. Hence depending on the date of remittance by the appellant part of the payment for a particular month is getting reflected in difference proceedings.

6. The learned Counsel for the respondent pointed out that as per the records produced by the appellant it can be seen that the wages/salary of the employees were paid in time by the appellant. When the wages are paid, the employees' share of contribution, which amounted for 50% of total contribution will be deducted from the salary of the employees. The appellant failed to remit even the employees share deducted from the employees in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution, at least to the extent of the employees share deducted from the salary of the employees.

7. Considering all the facts, circumstance, evidence and pleadings in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

8. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act. On a perusal of Section 7(I) of the Act it is seen that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in **M/s. Arcot Textile Mills Vs RPFC**, AIR 2014 C 295 held that no appeal is maintainable against an order issued U/s 7Q of the Act. The Hon'ble High Court Kerala in **District Nirmithi Kendra Vs EPFO**, WP (C) No. 234/2012 also held that no appeal can be entertained against an order issued U/s 7Q of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer