



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

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

(Wednesday the 10th day of March, 2021)

Appeal No.241/2019

(Old No. ATA 1284 (7) 2015)

Appellant : M/s. Hotel Saj Lucia,
East ,
Thiruvananthapuram- 695023.

By Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Pattom,
Thiruvananthapuram- 695004.

By Adv. Nitha N.S

This appeal came up for hearing on 11/02/2021
and this Industrial Tribunal cum Labour Court issued
the following order on 10/03/2021.

O R D E R

Present appeal is filed from Order No. KR /
10249 / RO / TVM / PD / 2014 / 2185 dt. 15/06/2015
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 01/2000 to 10/2005. The total damages assessed is Rs.96,084/-. The interest demanded U/s 7(Q) of the Act for the same period is also being challenged in this appeal.

2. The appellant is a Star hotel situated at East Fort, Trivandrum district of Kerala State. The business of the hotel depends on the arrival of tourists, mainly foreign tourists. The appellant was regular in compliance. While so the appellant received a notice from the respondent alleging delay in remittance of contribution. The delay in remittance of contribution was attributed for the period from 2000 to 2005. The appellant gave a reply vide letter dt. 02/05/2014 requesting to waive damages as the documents for back period was not available for verification of correctness of the same. Without considering the representation, the respondent issued the impugned orders. There is a delay of 09 to 14 years in assessing damages and belated impositions of damages is illegal and therefore the orders deserve to be set aside on that ground alone.

The impugned order is not sustainable for violation of principles of matter of justice. The respondent ought to have seen that there was no mensrea in belated remittance of contribution warranting the imposition of damages. The appellant was not given adequate opportunity to explain the circumstances leading to the delayed contributions.

3. Respondent filed counter denying the above allegations. The appellant defaulted in payment of EPF and other dues for the period 01/2000 to 10/2005. Any delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt. 21/03/2004 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement furnishing therein the due date of payment, the actual date of payment, the delay in remittance and the amount remitted was also send along with the notice. None appeared on behalf of the respondent. Hence opportunity were given on

15/07/2014, 07/10/2010, 14/11/2014, 22/12/2015, 20/02/2015 and 29/4/2015. The appellant acknowledged all the summons and preferred to keep silent and did not attend the hearing. Since the appellant failed to attend the enquiry in spite of providing 6 opportunities. The respondent had no option but to verify the relevant records and issue the impugned orders. It is a fact that due to delay in payment of contribution by the employers the fund suffers loss by not being able to invest the monies in time. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 AIR (SC) 1803 held that the viability of the social security project depends on the employer duly deducting the workers' contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform this function. With regard to the delayed payment of contribution, the Hon'ble Supreme Court observed that

the difficulties as claimed by the employers does not justify the delay in deposit of PF money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment, over different points of time. The Hon'ble court also pointed out that 50% of the contribution deposited late represented the employees share which have been deducted from employees wages and was a trust money with employer for deposit in the statutory fund. The delay in the deposit of this part of the contribution amounted to breach of trust and does not entitle the employer to any consideration for relief. In ***Chairman, SEBI Vs. Sriram Mutual Fund***, 9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the regulations would immediately attract levy of penalty irrespective of the

fact whether contravention was made by the defaulter with guilty intention or not.

4. The major ground pleaded by the learned Counsel for the appellant is the delay in initiating the proceedings U/s 14B of the Act. In ***Hindustan Times Ltd Vs Union of India***, 1998, SCC L & S (481) the Hon'ble Supreme Court held that there is no limitation in initiating proceedings under 14B of the Act as the legislature has not contemplated same. The Hon'ble Supreme Court also pointed out that when there is delay in initiating the process of assessing damages U/s 14B of the Act, the defaulting employers are having an advantage because they are holding the amount for longer period and utilizing the same in their business. Hence the appellant cannot claim that in view of the delay in initiating proceeding U/s 14B, the Impugned order shall be set aside. Another ground pleaded by learned Counsel for the appellant is with regard to violation of natural justice. It is seen that the appellant was offered six opportunities for appearing before the

respondent and explaining the reasons for delayed remittance of the contribution. According to the learned Counsel for the respondent the appellant acknowledged all these summons and failed to attend the enquiry. Having failed to attend the enquiry, after acknowledging the summons issued by the respondent, the appellant cannot come up in appeal and argue that they were not given adequate opportunity and therefore there was violation of natural justice. The learned Counsel for the appellant argued that though the appellant failed to attend the enquiry initiated by the respondent authority, they send a representation dt. 02/05/2014 which was not at all considered by the respondent authority while issuing the impugned order. According to the learned Counsel for the respondent, the 14B authority was not in receipt of any such representation and therefore there was no reference in the impugned order. However, it is seen from the representation that the appellant claimed that the remittance were made in time. When

the appellant makes such a claim, it is for the appellant to substantiate the same with documentary evidence.

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

6. 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 SC 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 against Sec 14B order is dismissed as there is no merit in the appeal. The appeal filed against Sec 7Q order is also dismissed as not maintainable.

Sd/-

(V.Vijaya Kumar)
Presiding Officer