



सत्यमेव जयते

**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.257/2018

(Old No. A/KL-35/2017)

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 02/02/2021
and this Industrial Tribunal cum Labour Court issued the
following order on 10/03/2021.

ORDER

Present appeal is filed from Order No.
KR/KCH/19798 / DAMAGES SCN. / 2016-17 / 16861
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

05/2013 to 10/2015. The total damages assessed is Rs. 3,77,025/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is Company incorporated under the provision of Company's Act 1956. The appellant is dealing in shipping and logistics. Due to various reasons the appellant Company's vessels were seized by the borrowers and lenders and also because of the frequent repairs due to saline conditions of the existing operational vessels, the revenue of the company is severely affected. Even the wages of the employees were delayed. The company is working in such a difficult situation for about 10 years. The appellant company is on the verge of closure. The appellant was making all possible efforts to remit the contributions in time. However, due to various reasons and adverse financial circumstances there was some delay in payment of provident fund contribution. There was no willful omission or laches on the part of the

appellant in paying the contribution in time. The financial difficulties of the appellant cannot be treated as a valid reason for delayed remittance of provident fund contribution, in view of the recent decisions of the High Courts as well as the Hon'ble Supreme Court of India. The respondent failed to exercise the discretion available to him U/s 14B of the Act. The respondent failed to consider the mitigating circumstances pleaded by the appellant. The delay in remittance of contribution was due to reasons beyond the control of the appellant and there was no willful delay, omissions or latches on the part of the appellant in belated remittance of the contribution. The impugned order issued by the respondent is a non speaking one and without any application of mind. The respondent failed to consider that there was no mensrea in belated remittance of contribution.

3. The respondent filed counter denying the above allegations. Admittedly the appellant delayed payment of provident fund contribution for the period

from 05/2013 to 10/2015. Belated remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent issued summons dt. 05/04/2016 to the appellant to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act should not be levied. A delay statement containing the due date of payment, the amount paid, the actual date of remittance and the delay was also forwarded to the appellant along with the summons. The appellant was also given a personal hearing on 18/05/2016 to enable the appellant to present his side of the case. A representative of the appellant attended the hearing, admitted the delay and submitted that the delay occurred due to financial difficulties faced by the appellant establishment. The claim of the appellant that they were facing financial difficulties and technical problems and the delay was not willful etc., were considered by the Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India***, 1998(2)

SCC 242 and held that financial problems relating to other indebtedness cannot be a justifiable ground for employer to escape liability. The liability of the appellant under the Act arises the moment the wages become due to member irrespective of whether it is actually paid or not. Mere existence of financial hardship is not sufficient explanation for delay in payment of contribution under the Act, unless it is also shown that no salaries were paid to the employees and consequently no deductions were made during the relevant period of time. The appellant cannot ignore the statutory liability cast upon him as an employer under Para 30 and 38 of EPF Scheme to remit the contributions within 15 days of close of every month. With regard to the decision of the Hon'ble High Court of Kerala in ***Indian Telephone Industries Vs RPFC***, 2006 (3) KLJ 698 the respondent therein filed a Writ Appeal No. 2182/2006 before the Division Bench of the Hon'ble High Court of Kerala against the judgment of the single bench and Hon'ble Court was pleased to

direct the Central Board of Trustees “ to consider the application for waiver **untrammelled by any one of the observations made by the learned Single Judge**”.

The Hon’ble Supreme Court India in ***Organic Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 held that the very purpose of Sec 14B is to penalize the defaulting employer not to commit a breach of statutory obligation as stipulated U/s 6 of the Act. The Hon’ble Court also observed that the pragmatics of the situation is that if the stream of the contributions were frozen by the employers default, after due deduction from the wages and diversion for their own purposes the Scheme would be damaged by traumatic starvation of the funds. The Hon’ble Supreme Court of India in ***Chairman, SEBI Vs. Sri Ram Mutual Fund***, AIR 2006 SC 228 held that mensrea is not an essential ingredient for contravention of the provisions of the civil Act and penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is

established and therefore, the intention of the parties committing such violation become immaterial.

4. The learned Counsel for the respondent pointed out that the proceedings issued U/s 7Q of the Act is not appealable.

5. The only or the main ground pleaded by the appellant in this appeal for delayed remittance of contribution is that of financial difficulties. The appellant produced the balance sheets and profit and loss account for the financial year 2013-14 and 2014-15 to substantiate their claim of financial difficulties. For the year ending 31/03/2014 the appellant is having a revenue income of 6.25 crores and the employees benefit expenses is 1.94 crores. The salaries and wages alone comes to 1.79 crores and the appellant has accounted Rs.12,12,439/-towards provident fund contribution. For the year ending 31/03/2015 the appellant had a revenue income for Rs. 4.86 crores and employee benefit expenses of Rs.1.85 crores. It is also seen that the salaries and

wages paid during the year is Rs.1.70 crores and the provident fund contribution paid was Rs. 12,68,867/-.

A company having such a financial background cannot claim that the delay in remitting provident fund contribution is due to financial constraints. Though the learned Counsel for the appellant claimed that the wages were not paid in time, his claim is not supported by the evidence available on record. However, the Balance Sheets and Profit and Loss Account produced by the appellant in this appeal shows that the appellant company was running under loss during the relevant point of time. The learned Counsel for the respondent submitted that the appellant failed to produce any documents before the respondent authority during the course of 14B proceedings. It ought to have been appropriate for the appellant to produce the financial statement and convince the respondent the financial stringency. The learned Counsel for the respondent also pointed out that from the documents now produced by the appellant it can

be seen that the salary is paid in time. When the salary is paid the employee share of the contribution which accounts for 50% of the total contribution is recovered from the salary of the employees. The appellant failed to remit even the employees share of the contribution deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense under Section 405 & 406 of Indian Penal Code, atleast to the extent of contribution deducted from the salary of the employees. Hence the appellant cannot plead that there is no mensrea in belated remittance of contribution.

6. 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.

7. The learned Counsel for the respondent submitted that no appeal is maintainable against an

order issued U/s 7Q of the Act. On perusal of Sec 7(I) of the Act, it is seen that there is no provision to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in ***Arcot Textile Mills Vs RPFC***, AIR 2014 SC 295 held that no appeal is maintainable 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) No. 234/2012 also held that an appeal against 7Q order is not maintainable.

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 filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V . Vijaya Kumar)
Presiding Officer