



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

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

(Monday the 22nd day of February, 2021)

Appeal No.441/2019

(Old No. ATA 433 (7) 2016)

Appellant : M/s. Mary Rani Tiles,
Kanjoor,
Alagappa Nagar
Trissur - 680302

By Adv. C.B Mukundan

Respondent : The Assisstant PF Commissioner
EPFO, Sub-Regional Office
Kaloor , Kochi -682017

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on
29/01/2021 and this Industrial Tribunal cum Labour
Court issued the following order on 22/02/2021.

ORDER

Present appeal is filed from Order
No.KR/KCH/13527/ Damages Cell / 2014 / 11578
dt.06/01/2015 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 02/1998 to 02/2009. The total damages assessed is Rs.1,03,931/-. 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 tile manufacturing unit. The appellant is covered under the provision of the Act. The appellant received a notice dt. 18/3/2014 alleging delay in remittance of provident fund contribution for the period from 02/1998 to 02/2009. In the above said notice the respondent proposed to levy damages and interest for back period ranging upto 17 years. The appellant did not preserve the records and therefore could not verify the correctness of the delay statement. However on verification of the available challans it was noticed that there were mistakes in the delay statement send by the respondent. It was also pointed out to the respondent during hearing that the damages for 03/2009, 10/2009 and 12/2009 had already been

assessed. The appellant also pointed out to the respondent that there are possibilities of delay on the side of the bankers of the respondent. The inordinate delay in initiating action by the respondent has resulted in prejudice to the appellant. Without considering any of the representations made by the appellant the respondent issued the impugned orders.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act w.e.f 31/12/1991. The appellant delayed remittance of contribution from 02/1998 to 02/2009. Any delay in remittance of contribution will attract damages U/s 14B read with Para 32A of EPF Scheme. The respondent therefore issued a notice dt. 02/04/2014 to show cause with documentary evidence as to why penal damages shall not be levied on the appellant. A detailed delay statement was also forwarded to the appellant. The appellant was also given a personal hearing on 5/5/2014. A representative of the appellant

attended the hearing and pointed out that the damages and interest for the months 03/2009,10/2009 & 12/2009 had already been determined and the same had already been paid. The appellant did not raise any dispute regarding the delay statement for the period 02/1998 to 02/2009. After the conclusion of the proceedings the appellant send a detailed statement along with copies of challans stating that for the period 03/1998 to 10/1998 the contribution was paid on time. The matter was verified with the bank statement and accordingly the damages U/s 14B was reduced to Rs.68,946/- and the interest was reduced to Rs.24,538/-. The same was also intimated to the employer vide letter dt. 13/1/2016. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India***, 1998(2) SCC 242 held that there is no period of limitation for initiating action for recovery of 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 expression

damages occurring in Sec 14B of the Act is in substance, the penalty imposed on the employer for the breach of statutory obligation. The purpose of this section is to deter and thwart to employers from defaulting in forwarding contribution to the fund, most often with ulterior motive of mis-utilising not only their own but also the employees contribution. 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 that the penalty is attracted as soon as contravention of statutory obligations as contemplated by the Act is established and therefore the intention of the parties committing such violations becomes immaterial.

4. One of the main ground pleaded by the learned Counsel for appellant is delay in initiating the proceeding U/s 14B of the Act. According to the learned Counsel for the appellant the proceedings were initiated after 17 years of default and prejudice is

cause to him as he could not trace out all the challan particulars of remittance. The learned Counsel for the respondent on the other hand argued that there is no limitation as far as Sec 14B is concerned. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**,(Supra) held that

“ There is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under Section 14B would be taken : mere delay in initiating action under Section 14 B cannot amount to prejudice inasmuch as the delay on the part

of the Department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. Hon'ble Apex Court has further observed that in fact, in cases under Section 14B if the regional Provident Fund Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been able to use these monies for his own purposes or for his business, In our opinion, it does not lie in the mouth of such a person to say that by reason of always in exercise of powers under section 14B , he has suffered loss. On the other hand, the defaulter

has obviously had the benefit of the “ boon of delay” which “ is so dear to debtors.”

5. In view of the above findings by the Hon'ble Supreme Court, it is not possible to accept the argument of the learned Counsel for the appellant that the delay in initiating the process has caused prejudice to the appellant. The respondent has taken into account the documents produced by the appellant before him and reduced the damages to Rs. 68,946/- and interest to Rs.24538/-. Therefore claim of the appellant is only presumptions and without any valid and legal evidence. The learned Counsel for the respondent also pointed out that there was no claim by the appellant that there was delay in payment of wages to the employees. When the wages are paid, the employees share of contribution is deducted from the salary of the employees. Non- remittance of employees share, deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. It is seen

from Annexure A3 delay statement that the delay in remittance of contribution varies from few days to 4 years. Withholding of employees share of contribution deducted from salary of employees is indeed breach of trust and therefore the appellant cannot claim that there is no mensrea in belated remittance of contribution atleast for the employees share. The learned Counsel for the appellant argued that the appellant is a small tile factory and therefore any additional liability in terms of damages will only force the appellant to close down the factory thereby denying employment to the existing workers.

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 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.

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 communicated vide revised order dt.13/01/2016.

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