



सत्यमेव जयते

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

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

(Tuesday the 17th day of November, 2020)

Appeal No.70 /2018

(Old No. KL/45/2016)

Appellant : M/s. FACT RCF Building Products Ltd
FACT Cochin Division Campus,
Ambalamedu,
Ernakulam- 682303

By Adv. C.B. Mukundan

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

By Adv. S. Prasanth

This appeal came up for hearing on 27/10/2020 and this Industrial Tribunal cum Labour Court issued the following order on 17/11/2020.

ORDER

Present appeal is filed from order No. KR/KCH/27950/ Damages Cell / 2015-16 / 836 dt. 21/06/2016 assessing damages U/s 14B of EPF & MP Act 1952 (hereinafter referred to as 'the Act') for belated payment of provident fund

contribution for the period from 09/2011 to 01/2013. The total damages assessed is Rs.1,11,837/-. Interest demanded U/s 7Q of the Act was also challenged in this appeal. However, EPF Appellate Tribunal vide its order dt.16/08/2016 while admitting the appeal dismissed the appeal against Sec 7Q order in view of decision of the Hon'ble Supreme Court in **Arcot Textile Mills Ltd Vs RPFC**, AIR 2014 SC 295.

2. The appellant is a joint venture company of two Central Government public sector undertakings, FACT, Udyogamandal and RCF, Mumbai. The said establishment is engaged in the business of manufacture and sale of gipsom based products. The appellant received a notice from the respondent directing to show cause why damages shall not be levied for belated remittance of contribution for the period from 09/2011 to 01/2013. A authorized representative of the appellant appeared before the respondent and filed a detailed written submission and also produced supporting documents. The copy of the written submission is marked as Annexure 8. Rejecting all the contentions made by the appellant the respondent issued the impugned order. The appellant

voluntarily made an application for coverage under the Act on 06/02/2012 as the commercial production of the appellant establishment started on 17/01/2012. The application is marked as Annexure A4. The respondent allotted a code number vide letter dt.19/06/2012 according to which the date of coverage was taken as 17/05/2011. Since the appellant disputed the date of coverage, the respondent initiated the proceedings U/s 7A and vide order dt. 07/05/2013, the date of coverage was shifted from 17/05/2011 to 17/09/2011. Copy of 7A order is produced and marked as Annexure A6. Again the respondent vide corrigendum dt.10/06/2014 and 25/06/2014 amended the date of coverage to 19/11/2011 and 19/09/2011 respectively. The copies of the corrigendums are produced and marked as Annexure A7 & A8. Though the confirmation of the date of coverage was delayed the appellant started complaints from July 2012 onwards. The appellant company had been in the financial crisis from the inception. The Balance Sheet for the year 31/03/2012, 31/03/2013, 31/03/2014 and 31/03/2015 are produced and marked as Annexure A9 to A12. All these facts were brought to the notice

of the respondent at the time of 14B enquiry and filed written argument notes and produced records. The Hon'ble High Court of Kerala in **EPFO Vs Sreekamakshy Agency (Pvt) Ltd, 2013(2) KLT 996** held that the respondent authority shall take into consideration the financial crisis of the establishments while deciding quantum of damages.

3. The respondent filed counter denying the above allegations. The appellant defaulted in payment of contribution from 09/2011 to 01/2013, remitting statutory dues U/s 6 of the Act belatedly. Belated remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant to appear in person and explain the delay. A representative of the appellant attended the hearing and admitted the delay in remittance of contribution. Hence the impugned order assessing damages was issued. In **Organo Chemical Industries Vs Union of India, 1979 (2) LLJ 416** the Hon'ble Supreme Court observed that the pragmatics of the situation is that if the stream of the contributions are frozen by employers default after the deduction from the wages

and diversion for their own purposes, the scheme would be damnified by traumatic starvation of fund. In **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 the Hon'ble Supreme Court of India held that the financial problem of an establishment cannot be a ground for delayed remittance of provident fund 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 the civil Act and penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intention of the parties committing such violation becomes immaterial.

4. The learned Counsel for the appellant mainly pleaded two ground for delayed remittance of contribution. First one is with regard to the delay in allotment of code number to the appellant establishment. According to the Counsel the appellant applied for a provident fund code number vide Annexure A4 letter dt. 06/02/2012 as the commercial production started on 17/01/2012. The respondent allotted a

code number on 19/06/2012 covering the establishment from 17/05/2011. The appellant disputed the date of coverage and the matter was taken up U/s 7A and vide Annexure A6 order dt. 07/05/2013, the date of coverage was shifted from 17/05/2011 to 17/09/2011 again vide Annexure A7 & A8 the date of coverage was slightly modified. According to the learned Counsel for the appellant this confusion regarding the date of coverage has adversely affected the remittance of provident fund contribution from the due date of coverage. Surprisingly the impugned order as well as the counter filed by the respondent is totally silent regarding the confusion in the date of coverage. Another ground pleaded by the learned Counsel for the respondent was that of financial difficulties. The appellant produced the Balance Sheets for the years ending 31/03/2012, 31/03/2013, 31/03/2014, and 31/03/2015 to substantiate their claim of financial difficulties. The exhibits produced are only single sheet summary which will not actually expose the actual financial condition of the appellant establishment. As held by the

Hon'ble Supreme Court in **Aluminium Corporation Vs Their Workmen** , (1963) II LLJ 629 SC the balance sheet cannot be relied on to proof the assets and liabilities of the establishment unless the documents are properly proved in the proceedings. However from exhibits Annexure A9 to A12 it can be seen that the appellat establishment was in severe financial strain during the relevant period of time. During 2011-12 the loss of the company was 81.97 lakhs and in 2012-13 it was 16.16 crores and 2013-14 it was 17.51 crores and 2014 -15 it was 21.93 crores. The Hon'ble High Court of Kerala in various decisions held that the financial constrains of an establishment is a relevant consideration while deciding the quantum of damages.

5. Considering all the facts, pleadings, evidence and arguments in this case I am inclined to hold that interest will be met if appellat is direct to remit 60% of damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified, and the appellant is direct to remit 60 % of the damages. The appeal against Section 7(Q) order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer