



सत्यमेव जयते

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

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

(Monday the 27<sup>th</sup> day of September, 2021)

**APPEAL No.719/2019**

(Old No. ATA 306 (7) 2012)

Appellant

M/s. Priya Estates & Plantations Pvt Ltd,  
Kochuthoppil,  
Parumala P.O,  
Thiruvalla  
Pathanamthitta – 689 626

Adv. Pallichal S.K.Pramod

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Parameswar Nagar,  
Kollam - 691 001.

Adv. Pirappancode V.S.Sudheer &  
Adv. Megha A

This case coming up for final hearing on  
14/09/2021 and this Tribunal-cum-Labour Court on  
27/09/2021 passed the following:

**ORDER**

Present appeal is filed from a composite order  
No.KR/KLM/434/PD/2011-12 / 1977 dt.01/02/2012 assessing

damages U/s 14B of EPF and MP Act, 1952 (hereinafter referred to as 'the Act') for the period 09/1989 to 09/1997 and interest U/s 7Q for belated remittance of contribution for the period from 08/1997 to 09/1997. The total damages assessed is Rs.12,18,528/- and the interest demanded Rs.57,581/-.

2. The appellant is a mixed plantation and is covered under the provision of the Act. Due to financial constraints in the agrarian industry the appellant started facing acute financial crisis. Since the appellant could not remit the contribution in time, the Recovery Officer of the respondent organization took over the management of the estate on 07/11/1991. The estate was managed by a Recovery Officer till 20/02/1996. From 20/02/1996 the management of the estate was taken over by the Official Receiver and liquidator, District Court, Kollam as per the direction of Hon'ble High Court dt.20/02/1996 in CRP/2446 of 1992. Thereafter the estate was not functioning. While so, some of the unions moved the State Government to take steps for reopen the estate and also to settle the employees' liabilities. In a meeting convened by the Minister for Labour, Governemnt of Kerala on 27/07/2011 it was decided to reopen the estate. As part of the settlement, the

appellant remitted an amount of Rs.7,49,278/- towards provident fund contribution. Subsequently a letter was received from the Recovery Officer of the respondent stating that an amount of Rs.29,85,099/- is further due from the appellant. A copy of letter dt.02/09/2011 from the Recovery Officer is produced and marked as Annexure A1. In the above letter a huge amount was shown outstanding in respect of M/s Dhanalaxmi Consolidate Transport Pvt Ltd and also some remuneration paid to the Official Receiver. The appellant filed an objection dt.31/10/2011 to the above said letter which is produced and marked as Annexure A2. Thereafter the Recovery Officer vide letter dt.05/12/2011 informed that the appellant establishment will be given an opportunity for hearing before the damages is assessed. The letter dt.05/12/2011 is produced and marked as Annexure A3. Thereafter the respondent authority issued a summons dt.10/01/2012 to show cause why the damages shall not be levied for delayed remittance of contribution for the period from 03/89 to 09/1997. A copy of the summons is produced and marked as Annexure A4. The appellant was also given opportunity for personal hearing on 23/01/2012. The appellant filed a detailed objection on

23/01/2012 which is produced and marked as Annexure A5. It was contented in the Annexure A5 representation that the appellant estate was under the management of the Recovery Officer for the period from 07/11/1991 to 20/02/1996 and thereafter for the period 20/02/1996 onwards the Official Receiver managed the affairs of the appellant establishment. Hence the appellant is not liable for the delay in remittance for the above period. The respondent initiated action after a long delay ranging between 8 to 23 years. Since the appellant remitted the contribution as per the terms of the agreement between the management and the unions, the respondent cannot attach such heavy damages on the appellant establishment. The respondent failed to exercise his discretion available to him under Sec 14B of the Act as well as Para 32A of EPF Scheme.

3. The respondent filed counter denying the above allegations. The appellant establishment is a chronic defaulter in remittance of provident fund contribution. Hence the contention of the appellant that they were regular in compliance cannot be accepted. The appellant defaulted in remittance of contribution during the period 3/9/1989 to 9/9/1997. Hence

the respondent issued notice dt.26/12/2011 directing the appellant to show cause why damages U/s 14B of the Act read with Para 32A of EPF Scheme shall not be levied on the appellant. A detailed delay statement showing the due date of payment, actual date of payment and delay in remittance along with proposed damages and interest was communicated along with the notice. The appellant was also given an opportunity for personal hearing on 10/01/2012. None appeared in the enquiry, however a letter dt.09/01/2012 was received requesting for a clear copy of the delay statement. Accordingly a clear copy of the delay statement was forwarded to the appellant with a direction to attend the hearing on 23/01/2012. None attended the hearing. A letter dt.23/01/2012 was received from the appellant the contents of which has no relation with the scope of enquiry U/s 14B of the Act. Since the appellant was already offered adequate opportunity and the appellant has also responded through letters, the enquiry was concluded and the impugned order was issued. The actual contribution for the defaulted period were remitted by the appellant on 03/09/2011 only and therefore the proceedings for assessing damages and interest initiated thereafter. The appellant establishment though

remitted the contribution failed to file the returns which is a mandatory requirement of the appellant.

4. The main contention of the appellant herein is that major part of the default or delay in remittance occurred when the appellant establishment was under the Receivership of the respondent organisation. Hence the appellant cannot be held responsible for delayed remittance of contribution. According to the learned Counsel for the respondent the appellant remitted the contribution on 02/09/2011 and therefore he cannot escape the liability of paying damages for delayed remittance. The appellant establishment was under receivership of the Recovery Officer of the respondent organisation and the Official Receiver and Liquidator of District Court, Kollam. The establishment remained closed from 1998 onwards. On the basis of a settlement between the unions and the appellant in the presence of the Hon'ble Minister of Labour, Government of Kerala on 27/07/2011, it was decided to reopen the establishment. As part of the settlement, the appellant agreed to remit an amount of Rs.7,49,278/- being the provident fund contribution of the employees. Accordingly the appellant remitted the said amount on 02/09/2011. Present proceeding

for levying damages and interest is initiated on the delayed remittance of contribution as per the settlement. The appellant is also raised certain other issues with regard to the action taken by the Recovery Officer which is not relevant for deciding the present issue. Except for Annexure A5 letter and the Annexure A4 notice issued by the respondent no other documents produced by the appellant is relevant for the issue under consideration. Annexure A5 letter is also seen to be addressed to the Recovery Officer and not to the respondent authority. The appellant has taken a specific plea that the appellant establishment was under receivership of the Recovery Officer of the respondent organisation and also the Court Receiver for major part of the assessment period. The written statement filed by the respondent is surprisingly silent on this issue. Though the appellant failed to produce any documents to substantiate his case that the appellant establishment was under the receivership of the Recovery Officer, during some part of the assessment period, Annexure A1 dt.02/09/2011 issued by the Recovery Officer of the respondent shows the remuneration paid to Official Receiver which indicates that the appellant establishment was under the receivership of receiver

of District Court, Kollam atleast for some time during the assessment period. From Annexure A3 dt.05/12/2011 it is seen that an amount of Rs.10,000/- was paid as remuneration to the Official Receiver, District Court, Kollam. Hence the claim of the appellant that a part of period of assessment was during the time when the appellant establishment was under receivership of the Official Receiver is substantiated. This will also clearly indicates the financial constraints of the appellant at the relevant point of time. Atleast for the period during which the appellant establishment was under the receivership of the Recovery Officer or for the period when the appellant establishment was under the receivership of Official Receiver, District Court Kollam, it is not possible to attribute any mensrea on the appellant for belated remittance of contribution. The learned Counsel for the appellant also raised the issues regarding the delay in initiating the process for levying damages. As rightly pointed out by the learned Counsel for the respondent, the process for levying damages can be initiated only after remittance of provident fund contribution by the appellant establishment. Since there was delay in remittance of contribution, the process for levying damages was also delayed.



Further the Hon'ble Supreme Court has taken a consistent stand in ***RPFC Vs KT Rolling mills Pvt Ltd***, 1995 AIR(SC) 943, ***M/s K. Street Lite Electronic Company Vs RPFC***, 2001 AIR (SC) 1818 and ***Hindustan Times Ltd Vs Union of India***, 1998 AIR SC 688 that there is no limitation for initiating process for assessing damages U/s 14B of the Act.

5. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 50% of damages assessed U/s 14B of Act.

6. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s7(I) 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 against 7Q order. The Hon'ble High Court of Kerala in District Nirmithi Kendra Vs EPFO, W.P.(C) No.234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in M/s ISD Engineering School Vs EPFO, W.P.(C) No.5640/2015(D) and also in St. Marys Convent School Vs APFC, W.P.(C) No.28924/2016(M) held that the order issued

U/s 7Q of the Act is not appealable. Though, the impugned order is a composite order, since the interest is demanded only for two months, I am not inclined to interfere with the demand of interest.

Hence the appeal is partially allowed. The impugned order assessing damages U/s 14B is modified and the appellant is directed to remit 50% of the damages. The assessment of interest U/s 7Q is only for the month of September and October 1997 and in view of the position explained above, the appeal against the 7Q demand is dismissed.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer