



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

सत्यमेव जयते Present: Shri.V.Vijaya Kumar, B.Sc., LL.M., Presiding Officer.

(Thursday the 18th day of March, 2021)

Appeal No. 474/2019

(Old No.ATA-442(7)2016)

Appellant M/s. Vishnu Cashew Company,
Akkavila, Mylom,
Kottarakkara
Kollam -691 506

By Adv. M.K.Saseendran

Respondent The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam -691 001

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

This case coming up for hearing on 18/02/2021
and this Industrial Tribunal-cum-Labour Court issued
the following order on 18/03/2021.

ORDER

Present appeal is filed from Order No.
KR/KLM/16491/PD/2015-16 dt.08/12/2015 assessing
damages U/s 14B of EPF & MP Act, 1952 (hereinafter
referred to as 'the Act') for belated remittance of
contribution for the period 3/2010 to 2/2014. The total

damages assessed is Rs. 5454/-. Interest demanded u/s 7Q of the act for the same is also being challenged in this appeal.

2. The appellant is engaged in the business of cashew processing. The appellant establishment remained closed on many occasions due to strike also scarcity of raw materials. The appellant received a notice from the respondent alleging delay in remittance of the contribution. The appellant attended the enquiry however without considering the representation of the appellant. The respondent issued the impugned orders. The appellant ought to have seen that the delay, if any, can be caused by the bank as the payment were made through cheque. The appellant did not get an opportunity to verify the damages and interest. The calculation done by the respondent is not supported by any documentary evidence.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act. Since there was delay in remittance of contribution for the period from 3/2010 to 2/2014. The appellant initiated proceedings U/s 14B of the Act by issuing summon dt. 9/1/2015. A detailed delay statement,

showing the due date of payment, the amount, actual date of payment and delay in remittance was also forward to the appellant along with the notice. The appellant was also given along with the notice. The appellant was also given an opportunity for personal hearing on 11/3/2015. The enquiry was adjourned to 24/03/2015 on the request of the appellant. The appellant requested for one more adjournment and the enquiry was adjourned to 28/4/2015. The representative of the appellant also filed written statement praying that in view of the financial constrains the damages and interest may be waived. The enquiry was further adjourned 02/06/2015, 16/06/2015, 5/8/2015, 8/10/2015 and finally to 29/10/2015. On 29/10/2015 the counsel appearing for the appellant requested to take lenient view and the enquiry was closed.

4. The demand U/s 7Q of the Act cannot be appealed against U/s 7(I) of the Act. The only ground pleaded in this appeal by the appellant is that the appellant remitted the contribution through cheque in time and if there is any delay in remittance of contribution, the same is due to the delay in the bank realizing the cheque. However the appellant failed to produce any document to substantiate

the claim. From the counter filed by the respondent it is seen that the appellant had taken the plea of financial difficulties for delay in remittance of provident fund contribution. The appellant failed difficulties also before the 14B authority as well as in this appeal. The Hon'ble High Court of Delhi in **Kee Pharma Ltd Vs APFC**, 2017 LLR 871 held that the appellant shall produce documents before the respondent authority to substantiate their claim of financial difficulties. In **Assistant PF Commissioner Coimbatore Vs EPF Appellate Tribunal New Delhi and M/s. Sree Rani Laxmi Ginning Spinning and Weaving Mills Ltd**, WPC No. 4633/2012 the Hon'ble High Court of Madras held that if the appellant company failed to produce documents to substantiate their claim of financial difficulties, any reduction of damages is in violation of Sec 14B . In **Sreekaamakshy Agency Pvt Ltd Vs EPF Appellate Tribunal** W.P.(C) No. 10181/2010 the Hon'ble High Court of Kerala held that when the employer plead financial difficulties for the delayed payment and produce supporting documents to substantiate the same, the authorities U/s 14B shall consider the same while deciding the quantum of damages. In **Elston Tea Estate Vs RPFC**, WP(C) No.

21504/2010 also the Hon'ble High Court of Kerala held that financial constrains have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as a mitigating factor for lessening the liability. In this case the appellant failed to produce any documents to support their claim of financial difficulties, for delayed payment of provident fund contribution.

5. 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.

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

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer