



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

सत्यमेव जयते

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

(Wednesday the 12th day of May, 2021)

Appeal No. 247/2019

(Old No. ATA No. 194(7) 2015)

Appellant : M/s. Thanveer Central School
Oachira, Krishnapuram P.O
Kerala - 690533.

By Adv. Paulson C. Varghese

Respondent : The Assistant PF Commissioner
EPFO, Kaloor
Kochi - 682 017

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 26/03/2021
and this Tribunal-cum-Labour Court on 12/05/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/KCH/24995/
Damages Cell / 2014 / 9063 dt. 20/11/2014 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 06/2007 to 09/2013. The total dues assessed is

Rs. 2,07,867/-. The interest demanded U/s 7Q of the Act of the same period is also being challenged in this appeal.

2. The appellant establishment is a charitable organization running educational institutions and rendering educational facilities to the poor and downtrodden. Due to acute financial constraints the appellant could not remit the contribution in time. The appellant made all attempts to raise financial assistance. The appellant received a notice from the respondent directing to show cause why damages shall not be assessed for delayed remittance of contribution. A representative of the appellant attended the hearing and explained the facts leading to the delayed remittance of contribution. The appellant was not given reasonable opportunity of being heard. The respondent issued Annexure A1 & A2 orders ignoring the contentions of the appellant. The delay claimed by the respondent is not correct and therefore the computation of interest and damages is not proper. The delay in payment of contribution is not willful. There is no mensrea to inflict a penalty on the appellant U/s 14B and 7Q. The reason for delay in remitting contribution is due to acute financial constraints of the appellant establishment which is a charitable organization.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/06/2007. The appellant establishment defaulted in payment of contribution for the period from 06/2007 to 09/2013. Delay in payment of contribution as provided U/s 6 of the Act will attract penal damages U/s 14B of the Act read with Para 32A of EPF Scheme. The appellant is also liable to pay interest at 12% per annum U/s 7Q of the Act. The respondent therefore issued notice dt.17/03/2014 to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act should not be levied. The appellant was also given an opportunity for personal hearing on 04/04/2014. A detailed delay statement showing monthwise dues for the defaulted months the actual date of remittance and the delay was also annexed alongwith the notice. Though summons dt.17/03/2014 was acknowledged by the appellant on 24/04/2014, there was no representation on the side of the appellant. However in the interest of natural justice the enquiry was adjourned on 27/05/2014 vide notice dt. 13/06/2014. None appeared in the enquiry on 27/05/2014 also. The enquiry was further adjourned on 10/07/2014. A representative of the appellant attended the hearing. The representative agreed with

the delay statement and filed no objection. The respondent authority therefore issued the impugned order U/s 14B and 7Q of the Act.

4. The appeal against Sec 7Q order is not maintainable as there is no provision U/s 7(I) to prefer an appeal against an order U/s 7Q.

5. The appellant is liable to remit the contribution within 15 days of close of every month in respect of all the eligible employees as per Para 30 & 38 of EPF Scheme. The liability of the appellant under the Act arises the moment the wages are earned by the members irrespective of whether it is actually paid or not. Any delay in remittance beyond the stipulated dates results in default and the appellant is liable to remit damages U/s 14B of the Act. In ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 the Hon'ble Supreme Court of India held that the reason for introducing Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds, most often with the ulterior motive of misutilising not only their own but also the employees contribution. The appellant did not dispute the delay in remittance of contribution inspite of the various opportunities given to the appellant. The total amount of contribution paid by the appellant in terms of

Sec 6 of the Act includes employees' share of contribution deducted from the salary of employees approximately 50% of the contribution paid by the appellant represents the employees' share of contribution deducted from the salary of the employees and not remitted to the fund in time. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 2 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act. 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.

6. The appellant establishment delayed remittance of provident fund and other contributions belatedly for the period from 06/2007 to 09/2013. Delayed remittance of contribution attract damages as contemplated U/s 14B of the Act read with Para 32 A of EPF Scheme. The respondent therefore initiated action for assessing damages and interest. Notice was issued to the appellant. None attended the hearing in the initial stages of the enquiry. Finally the Secretary of the trust attended the hearing and admitted the delay as intimated to them vide delay statement enclosed along with the summons. No other contention was seen raised by the appellant before the

respondent authority. In this appeal the appellant contented that there was delay in remittance of contribution in view of the financial constraints of the appellant establishment. The appellant failed to produce any documents to substantiate their claim of financial difficulties. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **SreeKamakshi Agency Pvt Ltd VsEPF Appellate Tribunal**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B **if the appellant pleads and produces documents to substantiate the same**. In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. In the absence of any evidence to support the claim of financial difficulties it is not possible to accept the claim of financial difficulties for reducing or waiving the penal damages. The learned Counsel for the respondent also

pointed out that 50% of the total contribution being the employees' share of the contribution was deducted from the salary of the employees and was also not remitted in time by the appellant establishment. The claim of the learned Counsel for the respondent is not objected to by the appellant. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having committed the offence of breach of trust, the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of employees' share deducted from the salary of the employees.

7. Considering the fact that the appellant is a charitable organization and is running an education institution it is felt that some relief can be given as far as assessment of damages is concerned.

8. Considering the financial position and other attending circumstance pleaded by the learned Counsel for the appellant it is felt that interest of justice will be met if the appellant is directed to remit 80 % of damages.

9. The learned Counsel for the respondent pointed out that an appeal against an order issued U/s 7Q of the Act is not

maintainable. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(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.

Hence the appeal is partially allowed the impugned order under Sec 14B is modified and the appellant is directed to remit 80% of damages. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer