



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

सत्यमेव जयते

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

(Monday the 26th day of October, 2020)

Appeal No.272/2019

Appellant : M/s. Sanjo Motors,
XVI/318 A
Areeckal Junction,
Karukutty P.O
Ernakulam Dist. – 683576

By Adv. C.B. Mukundan

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

By Adv. Thomas Mathew Nellimmottil

This case coming up for hearing on 16.10.2020 and this
Tribunal-cum-Labour Court on 26.10.2020 passed the following:

ORDER

Present appeal is filed from order No.KR/KCH/1529364/
Penal Damages/2019/1716 dt.21/02/2019 assessing damages
U/s 14B EPF & MP Act,1952 (hereinafter referred to as 'the Act') for
belated remittance Provident Fund contribution for the period

from 01/04/2015 to 31/03/2018. Total damages assessed is Rs.5,12,328/-. The impugned order is combined order assessing interest U/s 7Q of the Act also for the same period. The interest demanded is Rs. 2,59,003/-

2. The appellant is a partnership firm engaged in the sale and service of two wheelers. The appellant is covered under the provision of the Act. The appellant was regular in compliance. The appellant received summons dt. 09/12/2018 proposing to levy damages U/s 14B and interest U/s 7Q of the Act for belated remittance of contribution for the period from 01/04/2015 to 31/03/2018. The appellant was also given an opportunity to attend the enquiry on 27/11/2018 and further adjourned to 31/01/2019. A representative of the appellant appeared before the respondent on 31/01/2018. The representative of the appellant had submitted that the contributions were made in time and if at all any delay, it should be due to bank holidays, strikes, procedural delays, and the appellant cannot be held responsible for the same . The appellant also submitted before the respondent that the other units of the appellant were closed due to financial difficulties. The financial position of the appellant was very precarious during the relevant period of time. The appellant requested the respondent to provide copies of challans which would enable the appellant to

substantiate his contention in an effective manner. The appellant did not provide any of those records. There after the appellant received the impugned order assessing damages and interest. The calculation of damages and interest was not done as per circular dated 29/05/1990 issued by the headquarters of the respondent. The contents of the above circular was analyzed by the Hon'ble High Court of Delhi in the matter of the **Systems & Stamping Vs Employees Provident Fund Appellate Tribunal** (2008-LLR-0-485). The respondent failed to exercise the discretion available to him U/s 14B of the Act and Para 32 of EPF Scheme. The Hon'ble Supreme Court of India the case of employees in **Employees State Insurance Corporation Vs HMT Ltd**, 2008 (1) LLJ 814 (SC) held that when a discretion was conferred on a statutory authority to levy penal damages provision could not be construed as imperative. Existence of mensrea is a relevant consideration while assessing damages U/s 14B of the Act. In **V.S Murugan Vs RPFC**, 2011(4) LLM 778 the Hon'ble High Court of Madras held that simply because the statutory provision enables an authority to impose penalty it does not mean that such penalty should be imposed in a mechanical manner without looking into the attending circumstances as to whether there was any mensrea or actusreus on the part of the employer. EPFO has been granting

interest at the rate of 8.5 % to 8.75 % per annum where as the interest U/s 7Q is calculated @ 12 %.

3. The respondent filed counter denying the above allegations in the appeal memorandum. The appellant is covered under provisions of the Act w.e.f 01/04/2015. Since there was delay in remittance of contribution for the period from 01/04/2015 to 31/03/2018 . The respondent issued notice to the appellant U/s 14B / 7Q of the Act along with a detailed statement showing the delay in remittance of contribution. The appellant was also given an opportunity for personal hearing. The enquiry was posted on 27/11/2018 and 10/01/2019 . On the request of the appellant the enquiry was adjourned to 31/03/2019. A representative of the appellant attended the hearing and submitted that the financial position of the appellant establishment is very bad and therefore there was delay in remittance of Provident Fund contribution. The appellant however did not produce any document to substantiate their claim of financial difficulties. The respondent denied the allegation that the delay was on the side of the bank. If the appellant succeeded in proving that the delay was on part of the bank, the bank will be held responsible for the same. It is responsibility of the appellant to prove that they have remitted the dues within the stipulated time. In **Arcot Textile Mills Ltd Vs**

RPFC & Others, (2013) 16 SCC1 the Hon'ble Supreme Court held that " On a scrutiny of sec 7I , we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under 7Q. It is well settled law that right of appeal is creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position, a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and explains why the right of appeal is described as a creature of statute." The Hon'ble Supreme Court of India in **Hindustan Times Limited Vs Union of India** AIR 1998 SC 688 held that had financial condition is no defence for delayed deposit of Provident Fund. The respondent denied the allegation of the appellant that he

sought copies of challans at the time of hearing of the case by the 14B authority. There was no request from the side of the appellant during the course of hearing. The Annexure A3 circular dt. 29/5/1990 has no relevance as the scheme itself was amended w.e.f 01/09/1991. The decision of the Hon'ble High Court of Delhi in **Systems and Stamping (Supra)** has also no relevance to this case as the Hon'ble High Court was referring to Annexure A3 circular on the basis of the pre amended provision and there is no reference to amended Para 32 A of the scheme. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006- SC 2287 the Hon'ble Supreme Court of India held that mensrea is not an essential ingredient for contravention of the provisions of a Civil Act and penalty was attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and therefore, the intention of a parties committing such violation becomes immaterial. Even otherwise when the appellant violated the statutory provisions under Paras 30 & 36 and 38(1) of EPF Scheme of 1952, the appellant cannot plead that there was no mensrea in belated remittance of contribution. In **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982 (1) LLJ 440 the Hon'ble High Court of Kerala held that, a combined reading of Paras 30 & 32 of Employees Provident Fund scheme shows that where due payment

of wages is made impracticable for some reasons the obligation of the employer to pay both the contributions payable by himself and on behalf of the employee continues. In **C.P Kotak Balmandir Vs RPFC**, SCA No.3749 of 2011 the Hon'ble High Court of Gujarat held that mere existence of financial hardship is not sufficient explanation. Unless it is also shown that no salaries were paid to employees and consequently no deductions were made during the relevant period of time. It was also pointed out the defaulted amount included, the employee share of contribution recovered from the wages of the employees. No explanation will justify the belated payment of employees share of contribution. Unlike other penalties damages under 14B does not go to the State fund, but augment of EPF Trust fund the yields from which is utilized against for paying higher rate of interest to the employees. While upholding constitutional validity of sec 14B, the Hon'ble Supreme Court of India in **Organo Chemicals India Vs Union of India** 1979 920 LLJ 416 held that the reason for introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding the contributions to the fund.

4. The matter was listed for hearing on 16/10/2020 and there was no representation for the respondent. However, the respondent was given time to file argument notes. The respondent

failed to file any argument note also. The appellant wanted to produce certain additional documents. However, no additional documents were produced by the appellant.

5. The learned Counsel for the appellant raised the issue of financial difficulties, as a reason for the belated remittance of Provident Fund contribution. However the appellant failed to produce any documentary evidence to substantiate the claim of financial difficulties before the authority U/s 14B or in this appeal. The learned Counsel for the appellant pointed out that the Circular No. PG Cell/ 3(3) P-6/DAM dt. 29/05/1990 is applicable to the appellant wherein it was held that damages U/s 14B also include interest chargeable U/s 7Q of the Act. The appellant also pointed out the decision of the Hon'ble High Court of Delhi, in **Systems & Stamping Vs Employees Provident Fund Appellate Tribunal (Supra)**. The EPF Scheme was amended w.e.f 01/09/1991 incorporating a sliding table in Para 32 A. After amendment of the Scheme, Annexure A3 Circular and the Hon'ble High Court of Delhi confirming the same has no relevance. The learned Counsel for the appellant also argued that there was no intentional delay in remittance of contribution. Having taken such a stand, it was the responsibility of the appellant to establish beyond reasonable doubt that there were compelling reasons beyond the control of the

appellant which caused delay in payment of contribution. There is absolutely no evidence to prove that the delay in remittance was beyond the control of the appellant. The learned Counsel for the appellant also pointed out that there was no mensrea in delayed remittance of Provident Fund contribution. The respondent in its counter affidavit has stated that the appellant failed to remit even the employees share of contribution deducted from the salary of the employees in time. The employee's share works out to 50% of the total contribution. Non remittance of employees share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having failed to prove the financial difficulties and also having committed breach of trust, the appellant cannot plead that there was no mensrea in belated payments of contribution. The learned Counsel for the appellant argued that the representative of the appellant requested for copies of challans to verify the correctness of the delay statement. The delay in remittance is only 3-4 years old and appellant cannot argue that they don't have the details of remittances with them. However, the respondent in the counter affidavit pointed out that no such request was made before the respondent authority.

6. In the counter affidavit the respondent taken a stamp that the assessment of interest U/s 7Q is not applicable. The respondent has also quoted the decisions of the Hon'ble Supreme Court in **Arcot Textile Mills Ltd** case (Supra). It is pertinent to pointed out that the decision of the Hon'ble Supreme Court is applicable when separate orders are issued U/s 14B & 7Q. In this case it is seen that a combined orders were issued and therefore the appeal against the combined order is maintainable.

7. The learned Counsel for the appellant submitted that three showrooms of the appellant establishment were closed due to financial difficulties. This pleading of the appellant was not denied by the respondent in the counter affidavit. Though the appellant failed to substantiate this claim of financial difficulties, it is felt that the appellant deserves some leniency with regard to the levy of damages U/s 14B of the Act.

8. Considering the facts, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages assessed as

per the impugned order. Since the appellant could not successfully challenge the delay in remittance of contribution I am not inclined to interfere with the assessment of interest U/s 7Q of the Act.

Hence the appeal is partially allowed, the assessment U/s 14B is partially modified and the appellant is directed to remit 80% of the damages assessed as per the impugned order. The appeal against the assessment of interest is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer