



**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. 417/2019

(Old No. ATA No. 502(7) 2016)

Appellant : M/s. Ex- Servicemen Ideal Security
Agency, Vattakunnu
Edappally , Kochi – 682 24.

By Adv. C.B. Mukundan

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

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 30/03/2021 and this Tribunal-cum-Labour Court on 12/05/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/KCH/13048/ Damages Cell / PJT / 2015 / 391 dt. 08/03/2016 assessing the damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 02/1998 to 01/2014. The total dues assessed is Rs.1,09,104/-. The

interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is proprietary concern engaged in manpower supply. In the initial stages the appellant establishment was running smoothly. Later the proprietor of the appellant had fallen sick due to various ailments and had to undergo consecutive surgeries. Due to illness the appellant could not attend the working of the appellant establishment and the appellant plunged into deep financial crisis. There were occasions when the appellant could not disburse even the wages on time. The appellant received Annexure A1 & A2 order from the respondent demanding damages and interest for belated remittance of contribution for the period 02/1998 to 01/2014. Though the respondent claims that notice dt. 04/11/2014 was issued to the appellant the same was not received by the appellant. The respondent issued the orders ex-parte without complying with principles of natural justice. The respondent has claimed damages for a far back of period ranging upto 18 years. It may not be practical for establishments to preserve the records for such long periods. The appellant was facing huge financial difficulties during the relevant period of time. As per the audited balance sheet of

the appellant for the year 31/03/2014 and 31/03/2015 the appellant had incurred loss to the tune of Rs. 1,45,816/- and Rs.48,136/- respectively. The profit and loss account for years 2014 & 2015 are produced as Annexure A3 & A4. The assessment of damages is done in a mechanical way and without any proper application of mind. The delay in remittance of contribution was not willful and there is no mensrea in delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/10/1988. The appellant defaulted in payment of contribution from 02/1998 to 01/2014. The delay in remittance will attract damages U/s 14B read with Para 32A of EPF Scheme and also interest @ 12 % U/s 7Q of the Act. The respondent issued summons dt. 04/11/2014 to show cause with documentary evidence as to why penal damages as stipulated under sec 14B of the Act shall not be levied on the belated remittance of contribution. The appellant was also given an opportunity for personal hearing on 10/11/2014. A detailed damages statement showing the monthwise details of belated remittance for defaulted months was also enclosed along with the summons.

The summons was returned by the postal authority with marks "closed". Hence the enquiry was adjourned to 08/01/2015, and notice was again issued to the appellant. Neither the appellant nor his representative attended the hearing. No representation for adjournment was also received. The enquiry was again adjourned to 09/02/2015. The appellant failed to appear before the respondent authority on that date also. Hence the respondent issued the impugned orders.

4. The order issued U/s 7Q of the Act is not appealable as there is no provision U/s 7 (I) of the Act to file an appeal against an order issued U/s 7Q of the Act.

5. The claim of financial constraints made by the appellant is not relevant while assessing the damages as held by the Hon'ble Supreme Court of India held in ***Hindustan Times Ltd Vs Union of India and others***, 1998 (2) SCC 242. The appellant failed to produce any documents to support of financial difficulties. It is not correct to say the impugned order is issued mechanically. The appellant was given adequate opportunity to represent their case. They failed to attend the enquiry. The appellant cannot ignore the statutory liability cast upon him as an employer under Para 30 & 38 of

EPF Scheme to remit monthly contribution payable under the EPF accounts invariably within 15 days of close of every month in respect of all the eligible employees. The liability of the employer under the Act arises the moment the wages are earned by the members irrespective of whether it is actually paid or not. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 held that the reasons for introduction of sec 14B was to deter and thwart employers from defaulting in forwarding contribution to funds, most often with the ulterior motive of misutilizing not only their own, but also, the employees contribution. The total amount of contribution payable by the appellant in terms of Sec 6 of the Act includes employees' share of contribution as well as employers' share of contribution. 50% of the contribution payable by the employer represents by the employees' share of contribution actually deducted from the salary of the employees and the appellant cannot attribute any financial difficulties for not remitting the same regularly every month within the time stipulated under Para 30 & 38 of EPF Scheme. In ***Chairman SEBI Vs Sriram Mutual Fund*** , AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for

contravention of provisions of a civil Act and that penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intention of parties committing such violation becomes immaterial.

6. According to the learned Counsel for the appellant the main reason for belated remittance of contribution is the ill health of the appellant and also the consequential financial crisis of the appellant establishment. The appellant produced Annexure A3 & A4, the profit and loss account for the year ending 31/03/2014 and 31/03/2015 to substantiate the claim of financial difficulties. It is a one page document which will not reflect the actual financial position of appellant establishment. According to the learned Counsel for the respondent the documents cannot be accepted as a proof of financial constraints as there is hardly any details regarding the actual financial position of the appellant establishment. In ***Bengal Kagabkal Mazdoor Unit Vs Titagarh Paper Mills Co Ltd***, 1964 SCR 38 the Hon'ble Supreme Court held that the mere statements in balance sheet as regards current assets and current liabilities cannot be taken as a sacrosanct. The correctness of the figures as shown in the balance sheet

shall be proved by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. The learned Counsel for the appellant also pointed out that he was handicapped by the fact that the assessment proceedings were initiated after 18 years as he could not verify the details of remittance as reflected in the delay statement. The Hon'ble Supreme Court of India has repeatedly held that law of limitation is not applicable to the proceedings U/s 14B of the Act. ***In RPFC Vs KT Rolling Mills***, 1995 AIR SC 943, the Hon'ble Supreme Court held that there is no limitation in initiating action U/s 14B of the Act and pointed out that the delay in default related to even the contribution of employees which money the respondent after deducting from the wages of the employees must have been using for its own purposes and that to without paying any interest at the cost of those for whose benefits it was meant. In ***K Street Lite Electric Corporation Vs RPFC***, AIR 2001 SC 1818 the Hon'ble Supreme Court held that the delay in initiating proceedings U/s 14B of the Act will not be a ground for setting aside an order imposing damages . Further in ***Hindustan Times Ltd Vs Union of India*** AIR 1998 SC 688 the Hon'ble Supreme Court held that “ this, in our opinion is significant and it is

clear that it is not the legislative intention to prescribe any period of limitation for computing or recovering the damages". The learned Counsel for the appellant also argued that the damages and interest had already been levied for the period 01/2013 to 01/2014 and there is duplication in assessment of damages. The learned Counsel for the respondent pointed out that the claim of the appellant is not correct as the amounts on which the damages were assessed is different though the period is same. The learned Counsel also pointed out that when the appellant remits the contribution in installments on different dates the damages and interest also will be calculated separately and accordingly in this case the damages assessed are on different amount remitted by the appellant establishments on different dates. The learned Counsel for the respondent also pointed out that though the appellant claimed that there was delay in payment of wages no such documents is produced to substantiate the claim. However the documents now produced by the appellant as Annexure A1, A3, A4 would show that Rs.48,06,180.75 was paid as wages as on March 2014 and Rs.12,74,707.83 paid as wages for the year 2015. This documents will not indicate any delay in payment of wages atleast for the years 2014 & 2015. When wages are paid

the employees' share of contribution is deducted from the salary of the employees. 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 an 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 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 70% of damages.

8. 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 70% of damages. The appeal against 7Q order is dismissed as not maintainable.

Sd/-
(V. Vijaya Kumar)
Presiding Officer