



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

सत्यमेव जयते

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

(Wednesday the 02nd day of December, 2020)

Appeal No. 446/2019

(Old No. ATA No.154(7)/2016)

Appellant : M/s. Ashtavaidyan Thaikkattu Mooss
Vaidyaraj Oushadhasala
Gramavedhi, Anandapuram. P.O
Trichur - Kerala - 680 323

By Adv. C.B. Mukundan

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

By Adv.Thomas Mathew Nellimmoottil

This case coming up for final hearing on 02.11.2020
and this Tribunal-cum-Labour Court on 02.12.2020
passed the following:

ORDER

Present appeal is filed from Order No. KR/KCH
/15815/Damages Cell / 2015 /13889 DT. 09/12/2015
assessing damages U/s 14 B of the Act. (hereinafter
referred to as 'the Act') for belated payment of contribution
for the period from 10/1998 to 12/2008. The total
damages assessed is Rs. 92,442/-. The interest demand

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

2. The appellant is a partnership firm engaged in the business of health services. The appellant was regular in provident fund contribution. The appellant received a notice dt. 02/04/2014 issued by the respondent alleging delay in remittance of provident fund contribution for the period from 10/1998 to 12/2008. The appellant was also afforded an opportunity for personal hearing. The appellant attended the hearing and informed the respondent that the records for such a back period is not preserved by the appellant and therefore he is not in a position even to verify the correctness of the delay statement furnished along with the notice. On a perusal of the impugned order it can be seen that the same is issued in a mechanical way. There are many authorities to the effect that unless there is contumacious conduct on the part of the employer no damages can be levied.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of Act. It is a statutory obligation on the part of the appellant to remit contribution within 15

days of close of the month. Since there was delay in remittance of contribution the appellant was summoned U/s 14B of the Act to show cause why damages shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and admitted the delay. Hence the impugned order is issued by the respondent. No appeal is maintainable against proceeding issued U/s 7Q of the Act. The provident fund contribution is a statutory obligation and the Act and Schemes provisions mandate that the provident fund contribution shall be paid within the 15th day of close of every month. Failure to do so will attract damages U/s 14B of the Act read with Para 32A of the scheme. The appellant did not raise any dispute regarding the damages statement before the 14B authority. The present allegation that the challans were not available with the appellant is only an after thought, to prepare a ground for this appeal. The appellant is aware of the system prevailing in the respondent organization. The payment challans received from the bank as well as the appellant and the bank statement received from the State Bank of India are used to compile the annual accounts of the members for the

respective years. As per the Manual of Accounting Procedure the retention period of challans is only three years and after issuing the annual account slips of the members the same will be destroyed. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 held that " there is no period of limitation prescribed by the legislature for initiating action for recovery of damages U/s 14B. The fact that proceedings are initiated or demand for damages are made after several years cannot by itself be ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings U/s 14B would be taken; mere delay in initiating action U/s 14B cannot amount to prejudice in as much as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest." In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 the Hon'ble Supreme Court of India held that the introduction of Sec 14B was to deter and thwart the employers defaulting in forwarding contributions to the funds. In **Chairman SEBI Vs Sri Ram**

Mutual Fund, AIR 2006 SC 2287 the Hon'ble Supreme Court held that the imposition of penalty becomes a sine qua non of the violation and no excuse from the employer can be entertained in civil liability cases. According to the Hon'ble court mensrea is not an essential ingredient for contravention of the provisions of civil Act and penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established.

4. The appellant raised two issues challenging the impugned orders. The first issue is with regard to the delay in initiating the proceeding U/s 14B of the Act. As rightly pointed out by the learned Counsel for the respondent, this issue is already settled by the Hon'ble Supreme Court of India in **Hindustan times Ltd Vs Union of India** (Supra). As pointed by the Hon'ble Supreme Court any delay in assessing damages will only be advantageous to the appellant. In this particular case it can be seen that the damages for delayed remittance of contribution for the period from 10/1998 to 12/2008 is still pending. Had the respondent claimed the damages in time, the appellant should have paid the damages long back and by withholding the amount the appellant only

gained. It is interesting to note that the impugned orders are issued in the year 2014, and the recovery of the amounts are still pending. The second ground taken by the appellant is that of financial difficulties. The appellant failed to produce any evidence to support the claim of financial difficulties either before the 14B authority or in this appeal. According to the learned Counsel for the respondent no such contention was taken before the 14B authority by the representative who attended the 14B proceedings. The learned Counsel for the respondent also argued that the appellant has no case that the wages paid to the employees were delayed. When wages were paid to the employees, the employees' share of contribution is deducted from the salary of the employees. The appellant failed to remit in time even the employees' share of contribution which amounts to 50% of total share of contribution. Non remittance of employees' share of contribution deducted from the salary of the employee is an offence 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.

5. Considering the above facts, circumstances and pleadings I am not inclined to interfere with the impugned order issued U/s 14B of the Act.

6. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order 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. The Hon'ble Supreme Court of India in **Arcot Textile Mills Ltd Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable from a proceedings U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO** ,WP(C) 234/ 2012 the Hon'ble High Court of Kerala also took the view that no appeal can be filed from an order issued U/s 7Q of the Act.

Hence the appeal against Sec 14B order is dismissed as there is no merit in the appeal. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V.Vijaya Kumar)
Presiding Officer