



सत्यमेव जयते

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

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

(Monday the 26 th day of October, 2020)

APPEAL No.451/2019

(Old No. ATA No. 152(7)/2016)

Appellant : M/s. Eastern retreads Pvt. Ltd
Vazhakkulam Post,
Muvattupuzha,
Ernakulam,
Kerala- 686 670.

By Adv. C.B. Mukundan
Adv. Biju P. Raman

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

By Adv. Sajeev Kumar K. Gopal

This case coming up for final hearing on 09/10/2020
and this Tribunal-cum-Labour Court on 26/10/2020 passed the
following:

ORDER

Present appeal is filed from order No.KR/KCH/
15297/ Damages Cell / PJT / 2015 / 13894 dt.09/12/2015
assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter

referred to as 'the Act') for the period 02/1998 to 12/2008. Total damages assessed is Rs. 3,03,791/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a private limited Company engaged in the business of retreading of tyres and is covered under the provision of the Act. The appellant was regular in compliance. The appellant received a notice dt.26/12/2014 directing the appellant to show cause why damages and interest for the belated remittance of contribution for a period from 01/04/1996 to 31/03/2014 shall not be levied. It can be seen that the respondent has made some alterations in the calculation sheet provided to the appellant. The corrections were made without proper attestation. The period of levy of damages and interest relates back to 16 years. The appellant appeared before the respondent and produced supporting documents to prove the remittance of Provident Fund dues. The appellant has not preserved the challans for such a long period. Hence the appellant was not in a position to verify the correctness of payment details furnished by the respondent. An authorized representative of the appellant appeared before the respondent

on the date of hearing. He submitted that the appellant was prompt in remitting Provident Fund contribution and if there is any delay it would have been caused on the part of the bank in crediting payments made through cheques. The appellant also made a request to allow him to verify the relevant records particularly the payment challans. The appellant filed a written statement dt. 05/01/2015 which is produced and marked as Annexure A4. If at all therefore is any delay the possibility of errors on the part of State Bank of India or on the part of the respondent cannot be ruled out. It is a settled legal position that damages being penal in nature cannot be levied in a mechanical manner. There was no willful defiance of law and contumacious conduct on the part of the appellant in delayed of remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f 01/04/1999. The appellant defaulted in payment of Provident Fund contribution in several months during the period 01/1998 to 10/2008. Belated remittance of contribution will attract damages and interest U/s 14 B and 7Q of the Act. Hence a notice dt. 26.12.2014 was issued to the

appellant to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act read with Para 32A of EPF Scheme shall not be levied. The appellant was also given an opportunity for personal hearing on 05/02/2015. A detailed damages statement for belated remittance was also send along with the notice. A representative of the appellant attended the hearing and submitted Annexure A4 reply statement dt.05/01/2015. According to the appellant the Provident Fund dues were paid in time and there is any delay, it may be due to justifiable reasons. The appellant also contended that the notice is issued after 6 to 16 years and therefore they are naturally helpless to recollect the circumstances which lead to the delay in remittance. The respondent is expected to take action against a defaulter within reasonable time. However the appellant did not produce any documents to disprove the details of belated remittance. While issuing Annexure A3 notice the damages statement was verified with the records maintained by the respondent and excluded certain period for which damages and interest had already been assessed and remitted by the appellant.

4. The respondent also pointed out that proceedings U/s 7Q of the Act issued is not appealable as there is no provision U/s 7I to challenge an order issued U/s 7Q, of the Act.

5. According to the respondent, unlike other penalties damages U/s 14B does not go the state revenue but goes to augment the EPF trust funds. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 the Hon'ble Supreme Court of India while upholding the constitutional value of Sec 14B held that "the reason for introduction of the section was to d'etre and thwart employers from defaulting in forwarding contributions to the funds, most often with the ulterior motive of mis-utilizing not only their own but also the employees contributions". The Hon'ble Supreme Court also held that "the pragmatics of the situation is that if the stream of contribution were frozen by employers default after, due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the fund, public frustration from the failure of the project and psychic demoralization of the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the

workers share". As pointed above 50% of contribution payable by the appellant represents the employees share of Provident Fund contribution deducted from the salary of their employees and the appellant cannot attribute any reason for delayed remittance of the same. In **Chairman, SEBI Vs. Sri Ram 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 the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and therefore, the intention of parties committing such violation become immaterial. 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 under EPF Act for initiating action U/s 14B of the Act.

6. The learned Counsel for the appellant was relying on the delay in initiating the 14B proceedings as a ground for waving or reducing the amount of damages. According to him, there is a delay of 6 to 16 years in initiating the process and the request made the respondent, to allow the appellant to verify the records on the basis of which this proceedings were initiated

was also not allowed by him. According to the learned Counsel for the respondent the appellant is aware of the system prevailing Employees Provident Fund Organization according to which the payment challans received from the appellant is verified with the bank statement and entered in the system and same is used for preparing annual account slips of the employees. 100% check is done with regard to the remittance before issuing the annual account slips to the employees of the appellant. Once the annual account slips are issued the challans are kept for three years as provided in the Manual Accounting Procedure wherein the retention period of challans are three years. If the appellant is really interested in verify the correctness of statement, he ought to have verified his bank statement to confirm the same. According to the learned Counsel for the respondent no prejudice is caused to the appellant because of the delay in initiating the proceedings U/s 14B. The Hon'ble Supreme Court in **Hindustan Times Ltd Vs Union of India** (Supra) 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 is made after several years

cannot by itself be a 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 inasmuch 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 fact, in cases U/s 14B, if the Regional Provident Fund Commissioner had made computation earlier and send a demand immediately after amounts fell due, the defaulter could not have been able to use these monies for his own purposes or for his business. In our opinion it does not lie in the mouth of such persons to say that by reason of delay in the exercise of powers U/s 14B, he has suffered loss. On the other hand the defaulter has obviously had the benefit of the “ boon of delay” which ‘is so dear to debtors” The dictum laid down by the Hon’ble Supreme Court in the above case is surely applicable to the present case as the appellant failed to make any honest effort to substantiate his claim that the delay, if any, would have been on the part of the bank. Another contention raised by the learned Counsel for the appellant is that there were some

corrections in the delay statement which is not attested by any authorized person. According to the learned Counsel for the respondent, the office of the respondent noticed that for certain periods damages and interest were already levied and remitted by the appellant. Hence those periods were excluded from the statement. It is seen that due to corrections made in the delay statement the proposed amount of damages and interest has gone down and therefore no prejudice is caused to the appellant. The last ground pleaded by the learned Counsel for the appellant was that there was no element of mensrea in belated remittance of contribution. The learned Counsel for the respondent argued that 50% of the delayed contribution is with regard to the employees' share of contribution deducted from the salary of the employees. Non- payment of employees share of contribution deducted from the salary of the employees' is an offence of U/s 405 & 406 of Indian Penal Code and therefore the appellant cannot claim that there is no intentional delay and there is no element of mensrea.

7. The learned Counsel for the respondent pointed out that no appeal can be filed from a proceedings issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that no

appeal is provided from Sec 7Q order. 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 an order issued U/s 7Q of the Act. In **District Nirmithi Kendra Vs EPFO**, W.P(C) 234/2012 the Hon'be High Court of Kerala also took the view that no appeal can be filed against an order issued U/s 7Q of the Act. Hence the appellant against Sec 7Q order is not maintainable.

8. The learned Counsel for the appellant pleaded that the financial position of the appellant establishment is very bad. However he failed to produce any documents to support his claim of financial difficulties. The learned Counsel for the appellant also pleaded that considering the delay in initiating the proceedings under 14B and due to the fact that they are not in a position to verify the details of delayed statement, the appellant may be given some reduction in damages, as the delay in remittance of contribution was only because of financial constraints. On a verification of the delay statement, it is seen that the delay in remittance of contribution varies from 15 days to 700 days. The average delay is above 200 days and none of

the justification given by the learned Counsel for the appellant can be accepted for such a delay.

9. Considering all the facts, pleadings and arguments in this appeal, 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.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer