



BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL~CUM~LABOUR COURT, ERNAKULAM

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 29th day of November, 2021)

APPEAL No.472/2019

Appellant

M/s. Mangalam Web Media Pvt. Ltd.,
S.H.Mount P.O.,
Kottayam – 686 006.

By M/s. Menon&Menon

Respondent

The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 30/08/2021
and this Tribunal-cum-Labour Court on 29/11/2021 passed the
following:

ORDER

Present appeal is filed from order No.
KR/KTM/15074/APFC/Penal Damage/14B/2019-2020/3475
dt.03/09/2019 assessing damages U/s 14B of EPF & MP Act
(hereinafter referred to as 'the Act') for belated remittance of

contribution for the period from 03/2015 to 07/2016 (remittances made during the period 07/03/2017 and 31/03/2019). The total damages assessed is Rs.3,01,980/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is an establishment covered under provision of the Act. The respondent authority issued Annexure A4 notice dt.29/04/2019 U/s 14B of the Act, directing to show cause why damages U/s 14B shall not be levied. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed written statement dt. 26/08/2019 which is produced and marked as Annexure A5. Ignoring the contentions in the written statement, the respondent issued the impugned orders. The demand raised by the respondent authority is highly belated. It is settled law that belated claims cannot be sustained. The appellant was facing heavy financial constrains during the relevant point of time which is evidenced by Annexure A1 to A2. As per books of accounts, the company is continuously in loss. The accumulated loss of the appellant as on

31/03/2016 was Rs.576.24 lakhs. A copy of the balance sheet as on 31/03/2017 is produced and marked as Annexure A2. A copy of the certificate dt.27/11/2018 issued by the Chartered Accountant of the appellant is produced and marked as Annexure A3. There is no proof to show that there was intentional delay in remitting the contribution. The delay in remittance was due to heavy financial constrains during the relevant point of time. The respondent authority failed to exercise its discretion U/s 14B of the Act. Since Sec 14B is a penal provision it is necessary to consider the facts and circumstances which led to delayed remittance of contribution. With effect from 01/07/1999 the respondent authority is collecting interest @ 12%. However the rate of interest is much higher than the banks rate of interest. The Hon'ble High Court of Kerala in various decisions held that financial difficulties is a relevant consideration while directing imposition of damages as per the amended Sec 14B.

3. The respondent filed counter denying the above allegations. The appellant establishment is liable to remit contribution within 15 days of close of every month as per Para 38

of EPF Scheme. There is no dispute that there was delay in remittance of contribution. The Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Vs Regional PF Commissioner**, 1982 LAB IC 1422 held that Para 38 of EPF Scheme obliged the employer to make the payment within 15 days of the close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contributions payable by himself and on behalf of the member employed by him, in the first instance. In the Annexure A5 explanation, the appellant stated that the appellant establishment was bearing the liabilities of the old company which was renamed as appellant and was facing financial difficulties from 2016 to 2017. Though the appellant pleaded financial difficulties as a ground, no documents were produced to substantiate their claim. Annexure A1 to A3 are only selected pages of the balance sheet of the appellant which are inadmissible in evidence and the contents are unreliable. The Hon'ble Supreme Court of India in **Hindustan Times Vs Union of India**, AIR 1998 SC 688 held that the default on the part of the employer based on the plea of financial difficulties cannot be justifiable ground to escape the liability. The Hon'ble Supreme

Court of India in **Chairman, SEBI Vs Sreeram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of civil law. In **Organo Chemical Industries Vs Union of India**, 1979 SC 9 0020 LLT 0416 the Hon'ble Supreme Court held that even if it is assumed there was loss sustained, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time.

4. There is no dispute regarding the fact that the appellant delayed remittance of contribution during the relevant point of time. Since there is delay, the respondent initiated action U/s 14B of the Act and issued show cause notice which is produced as Annexure A4. A representative of the appellant attended the hearing and filed Annexure A5 representation. In the representation it was pointed out that the appellant company was originally known as Mangalam Confectionery Private Limited and later renamed as Mangalam Web Media Private limited and the original company was having huge losses during the relevant

point of time. The only other ground taken by the appellant is that damages is in the nature of penalty and can be imposed only when there is any wilful default, defiance of law or contumacious conduct on the part of the appellant.

5. In this appeal the appellant had taken a stand that the delay in remittance of contribution was due to financial constrains of the appellant establishment. The appellant produced Annexure A1 to A3 to substantiate the claim of financial difficulties. For the year ending 31/03/2015 the total revenue of the appellant company was Rs.37.90 lakhs which has increased to 2.07 crores in the year ending 31/03/2016 and 3.03 crores for the year ending 31/03/2017. Similarly it is seen that for the year ending 31/03/2015 the salary paid to the employees is Rs. 66 lakhs and for the year ending 31/03/2016 the salary paid has increased to 1.29 crore and for the year ending 31/03/2017 it has increased to 1.57 crores. It is also seen that a nominal amount of employers' share of provident fund contribution was also remitted by the appellant during all those years. On the basis of the financial statement now produced by the appellant it is clear

that delay in remittance of contribution is not due to financial constraints of the appellant establishment. The appellant also produced Annexure A3 certificate from a Chartered Accountant showing that the net worth of the company is in the negative for the last so many years. However it is clear that such certificates regarding net worth, cannot be accepted for the purpose of explaining the reason for belated remittance of provident fund contribution. The learned Counsel for the respondent argued that the documents now produced to prove the financial difficulties are incomplete documents and only a few page extracts of the balance sheets are produced to mislead this Tribunal regarding the financial position of the appellant establishment. The learned Counsel for the respondent also pointed out that the mere statements in balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The Hon'ble Supreme Court of India in **Aluminium Corporation Vs their Workmen and Others** , 1964 4 SCR 429 held that the correctness of the figures as shown in the balance sheet itself are to be established by proper evidence before court by the persons responsible for preparing the balance sheet or by other competent witnesses. The

learned Counsel for the respondent also pointed out that the document now produced by the appellant would clearly prove that the wages of the employees were paid in time. When wages of the employees 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 the offence of breach of trust, the appellant cannot claim that there was no intentional delay in belated remittance of contribution atleast to the extent of employees' share deducted from the salary of the employees.

6. The learned Counsel for the appellant also pointed out that there was delay in initiating the proceedings U/s 14B of the Act. The learned Counsel for the respondent pointed out that there was no delay and the proceedings under 14B can be initiated only after the appellant remits the contribution. Further the Hon'ble Supreme Court has confirmed in various cases that there is no limitation in initiating proceedings U/s 14B. The Hon'ble Supreme Court in **RPFC Vs KT Rolling Mills Pvt Ltd**, 1995 (10) LLJ 882,

Hindustan Times Vs Union of India, 1998 (1) LLJ 682, and **M/s. K. Street Lite Electric Corporation Vs RPFC**, 2001 (1) LLJ 1703 held that there is no limitation provided U/s 14B of the Act and therefore introducing the concept of limitation in Sec 14B will be in violation of the legislative intention. The Hon'ble Supreme Court also pointed out that the delay in default related even to the contribution of the employees share which money, the respondent after deduction from the wages of the employees, must have used for its own purpose at the cost of those for whose benefit it was meant. Any different stand would only encourage the employers to thwart to object of the Act.

7. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act . In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

8. Though the documents produced by the appellant in this appeal cannot be relied on to prove the financial status of the appellant establishment, it would definitely show that the appellant establishment was running under loss during the relevant point of time. The appellant establishment is therefore entitled to some relief as far as damages U/s 14B is concerned.

9. Considering the facts, circumstances, pleadings and evidence 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 U/s 14B of the Act.

10. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order 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 an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D) and also in **St. Mary's Convent School Vs APFC**, WP (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 U/s 14B of the Act is modified and the appellant is directed to remit 80% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/~

(V. Vijaya Kumar)
Presiding Officer