



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

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

(Thursday the 8<sup>th</sup> day of April , 2021)

**Appeal No.49/2017**

Appellant : M/s. Hotel RV Tower,  
East Nada , Guruvayoor  
Thrissur- 680 101.

By Adv. C.B. Mukundan

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

By Adv. Thomas Mathew Nellimmootil

This appeal came up for hearing on 09/03/2021 and this Industrial Tribunal cum Labour Court issued the following order on 08/04/2021.

**ORDER**

Present appeal is filed from Order No.KR/ KCH/ 15710/Damages SCN.2/2017-18/7114 Dt. 28/08/2017 assessing damages U/s 14B of EPF & MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period 04/1998 to 12/2013. Total

damages assessed is Rs.3,10,009/-. The interest demanded U/s. 7Q for the same period is also being challenged in this appeal.

2. The appellant is a Hotel and is covered under the provisions of the Act. The appellant received a notice dt. 13/03/2014 from the respondent proposing to levy damages for belated remittance of contribution for the period from 04/1998 to 12/2013. It was proposed to levy damages for 18 years. It is true that the appellant was afforded the opportunity for hearing. The appellant attended the hearing and submitted a representation dt. 22.05.2014. The representation is produced and marked as Annexure A5. The coverage of the appellant establishment under the provisions of the Act was disputed by the appellant before the Hon'ble High Court of Kerala. The Hon'ble High Court upheld the coverage. Though the appellant was under real financial constrains, remitted the dues in two installments. The financial difficulties of the appellant establishment can be seen from the profit and loss account for the year 2010-11 to 2014-15. The profit and loss account for these years are produced and marked as Annexure A4 series.

Once the provident fund contributions were remitted, the respondent initiated action for assessing damages for belated remittance of contribution for last 18 years. The appellant has not maintained the records for that back period. Hence the appellant could not verify the correctness of payment details furnished by the respondent in Annexure A statement. Circular dt. 29/05/1999 issued by the head office of the respondent clearly indicates that the damages include the 7Q component also and there is no need to charge 7Q additionally. The above circular was also confirmed by the Hon'ble High Court of Delhi in ***Systems and Stamping Vs Employees PF appellate Tribunal***, 2008 LLR 485. The respondent failed to exercise his discretion available to him U/s 14B of the Act as well as Para 32A of EPF Scheme. The appellant remitted the contribution once the dispute regarding applicability of the Act to the appellant is resolved by High Court of Kerala. Hence there is no mensrea or intentional delay in belated remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under

the provisions of the Act with effect from 01/04/1998 as the appellant satisfied all the requirements under the Act. The appellant establishment disputed the coverage and the enquiry U/s 7A of the Act was initiated and the same was concluded vide order dt. 22/12/2000 upholding coverage w.e.f 01/04/1998. The appellant filed OP No. 1556/2001 challenging the order U/s 7A. The Hon'ble High Court of Kerala dismissed the writ petition vide judgment dt. 25/05/2009. Admittedly there was delay in remittance of contribution which will attract damages U/s 14B of the Act and also interest U/s 7Q. Hence a notice dt. 30/03/2014 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. The monthwise details regarding the belated remittance was also forwarded to the appellant. The appellant was also given an opportunity for personal hearing on 11/04/2014. Since the appellant failed to dispute the delay in remittance of contribution, the respondent issued the impugned orders assessing damages and interest. The appellant was covered under the provisions of the Act w.e.f 01/04/1998 and the coverage memo was issued to the appellant on 01/06/1998.

The appellant on his own disputed the coverage before the 7A authority and also before the Hon'ble High Court of Kerala. If a liability is created by law, the mere fact that one raised a dispute about the liability and persisted on litigation of all levels will not justify the extinguishment of the liability. PF dues are statutory in nature which is required to be paid within the stipulated time irrespective of the financial constrains of the appellant establishment. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs. Union of India***, 1998(2) SCC 242 held that 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 purpose 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 held that the reason for introduction of Section 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds most often with the ulterior motive of mis-utilising not only their own but also the employees contribution.

According to the Hon'ble court, if the stream of contributions were frozen by employer default after due deduction from the wages and diversion for their own purposes the scheme would be damnified by traumatic starvation of funds.

4. The appellant establishment is covered under the provision of the Act w.e.f 01/4/1998 vide coverage memo dt. 01/06/1998. Hence the appellant was aware of its statutory obligation to remit provident fund contribution in respect of its employees. The appellant challenged the coverage U/s 7A of the Act and also before the Hon'ble High Court of Kerala. The Hon'ble High Court vide its judgment dt. 25/05/2009 dismissed the original petition holding that there is no merit in the contention of the appellant. It is seen from the delay statement that the appellant started compliance only w.e.f 25/01/2010. According to the learned Counsel for the appellant the delay in remitting contribution till the Hon'ble High Court of Kerala disposed of the original petition cannot be attributed to the appellant. When a statutory order is challenged before the appellate forums the appellant was also aware of the consequences of challenging

the order in appeal. Hence it is not possible to accept the argument of the learned Counsel for the appellant that the time period from the date of coverage till the disposal of the OP by the Hon'ble High Court of Kerala shall be excluded for the purpose of assessing damages U/s 14B of the Act. The learned Counsel for the appellant also pleaded that the delay in remittance of contribution was also due to financial constraints of the appellant establishment. The appellant produced Annexure A4 series, profit and loss account for the years 2010-11, 2011-12, 2012-13 and 2013-14 in this appeal. These documents now produced are not authenticated by any competent person and therefore it is difficult to accept the genuineness of the same. The learned Counsel for the respondent also stated that the figures in balance sheet or profit and loss account cannot be accepted unless it is properly proved by a competent person before the concerned authorities. In this case the appellant even failed to produce any document before the respondent authority and same cannot be allowed in an appeal since the same was not properly analyze by the authority below. Annexure A3 is produced by the appellant is the detailed

delay statement forwarded by the respondent along with the notice of hearing. It is seen that the delay in remittance ranges from few days to 4273 days. It is also seen that even after the dispute is resolved by the decision of the Hon'ble High Court of Kerala, there is considerable delay in remittance of contribution. To certain extend it can be argued that there was no mensrea in belated remittance of contribution for the period from the date of coverage till 25/05/2009 when the Hon'ble High Court of Kerala decided the applicability. However it is not possible to accept the plea of mensrea subsequent to the decision by the High Court of Kerala as the appellant was aware of the legal consequence of the decision of the Hon'ble High Court. It was also argued by the learned Counsel for the respondent that atleast for the period from 05/2009 to 12/2013 the appellant cannot claim any relief as the appellant was paying the wages to the employees and deducting the employees' share of contribution which was not remitted with the respondent authority in time. Non remittance of contribution deducted from the salary of the employee is an offence of breach of trust U/s 405 & 406 of Indian penal



Code and the appellant cannot claim any relief on ground of mensrea. The delay in initiating process was also raised by the learned Counsel for the appellant which from the facts of the case can only be attributed to the appellant. Proceedings U/s 14B can be initiated only after the remittance/recovery of contribution from the employers and in this particular case the delay was caused by the appellant himself and therefore the appellant cannot claim that there was delay in initiating proceedings U/s 14B of the Act. Even otherwise it is settled law that there is no limitation for initiating proceedings U/s 14B of the Act.

5. Considering all the facts, circumstance, evidence and pleadings in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 65% of the damages assessed U/s 14B of the Act.

6. The learned Counsel for the respondent submitted that no appeal is maintainable against an order issued 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 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 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) No. 234/2012 also held that an appeal against 7Q order is not maintainable.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 65% of the damages assessed U/s 14B of the Act. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-  
**( V. Vijaya Kumar )**  
Presiding Officer