



**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.85/2018

Appellant

M/s. Meenachil Rubberwood Ltd.,
Adivaram P.O, Poonjar
Kottayam – 686 582.
Wrongly shown as
M/s. Meenachil Rubberwood Pvt. Ltd.,
Manackel Complex, Erattupetta
Kottayam – 686121

By Adv. Krishna Menon

Respondent

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 01/09/2021
and this Tribunal-cum-Labour Court on 29/11/2021 passed the
following:

ORDER

Present appeal is filed from order No. KR / KTM / 15549
/ APFC /Penal Damage/2017-18/6574 dt. 27/02/2018 assessing

damages U/s 14B of EPF & MP Act (hereinafter referred to as ‘the Act’) for belated remittance of contribution for the period from 07/2013 to 02/2017 (remittance of EPF dues between 25/01/2014 and 31/12/2017). The total damages assessed is Rs.9,14,148/-. 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 company registered under the Companies Act and is engaged in the business of manufacturing and selling of treated rubber wood and related products. The appellant is facing heavy financial difficulties. The accumulated loss of the company as on 31/03/2017 was Rs. 661.8 lakhs as against a share capital of Rs.180 lakhs. The accumulated loss is more than the networth of the company. A copy of the annual report for the 2014-2015 is produced and marked as Annexure A1. A copy of the balance sheet on 31/03/2016 is produced and marked as Annexure A2. A copy of the balance sheet on 31/03/2017 is produced and marked as Annexure A3. The appellant received a notice from the respondent dt.16/01/2018 directing to show cause why damages shall not be levied for belated remittance of contribution. Copy of the notice is produced and marked as Annexure A4. The demand made by the

respondent is highly belated as there is delay of more than 5 years. Without considering any of the contentions the respondent issued Annexure A5 order demanding damages and Annexure A6 order demanding interest. There is no proof to show that there was intentional delay in remittance of provident fund contribution. The appellant was facing heavy financial constrains and incurring losses during relevant point of time. The respondent failed to exercise its discretion U/s 14B of the Act. The Sec 14B as it stands now is a penal provision and therefore the respondent is liable to consider whether the default is wilful on the part of the appellant. The Hon'ble High Court of Kerala in **Standard Furniture Vs EPF Appellate Tribunal**, 2020 (3) KHC 793 (DB) held that financial constrains is a mitigating circumstance while deciding the quantum of damages.

3. The respondent filed counter denying the above allegations. There was delay in remittance of contribution by the appellant during the period 07/2013 to 02/2017. Therefore a notice was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and pleaded financial difficulties. However Annexure A1 to A3 were not produced before

the respondent authority. The appellant is claiming financial difficulty for the period from 31/03/2014 to 31/03/2017 where as the delay in remit is for the period from 07/2013 onwards. The appellant failed to produce any documents before the respondent authority to substantiate their claims. The appellant also did not disclose how they suffered losses. Self inflicted losses cannot be used to escape the natural consequences therefrom, including levy of penalty U/s 14B. The few page extracts of the balance sheet now produced cannot be admitted as evidence as the same is unreliable to prove the financial position of the appellant company. 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 for the employer to escape the liability. In **Organo Chemical Industries Vs Union of India**, 1979 SC 90020 LLT 0416 the Hon'ble Supreme Court of India held that even if it is assumed that 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 allow to be linked with the financial position of the establishment over different points of time. The liability of the appellant arises from

Sec 6 of the Act and Paras 30 & 38 of EPF Scheme. The delay statement send along with the notice would clearly prove the delay in remittance of contribution by the appellant. The Hon'ble Supreme Court of India in **Hindustan Times Vs Union of India**, AIR 1998 SC 688 held that there is no limitation as far as levy of damages is concerned. The above decision was followed by the Division Bench of Hon'ble High Court of Punjab & Haryana in **Elsons Cotton Mills Ltd Vs RPFC**, 2001 (1) SCT 1101 (P&H) DB)

4. Admittedly there was delay in remittance of provident fund contribution during the relevant point of time. The respondent therefore initiated action U/s 14 B for assessing damages for belated remittance of contribution. The respondent issued notice alongwith a delay statement wherein the due date of payment, the amount paid, the delay in remittance of contribution etc were furnished. The appellant entered appearance through a representative and claimed financial difficulties as the reason for delayed remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to produce any documents to substantiate the claim of financial difficulties. The respondent authority therefore issued the impugned orders.

5. According to the learned Counsel for the appellant the appellant establishment was facing real financial constrains during the relevant point of time. The appellant produced a few page extracts of the annual report pertaining to the balance sheet for the period 2014-2015, 2016-2017. According to the learned Counsel for the respondent, these documents cannot be accepted for proving the financial constrains of the appellant establishment. According to him 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 Workman**, 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 in court by those responsible for preparing a balance sheet or by other competent witnesses. The balance sheet however show that for the year ended 31/03/2014 the revenue income of the appellant establishment was Rs.3.39 crores and for the year ending 31/03/2015 it was Rs.3.14 crores and for the year ending 31/03/2016 the revenue income was Rs.3.70 crores and for the year ending 31/03/2017 the revenue income was Rs. 5.5 crores. Further it is also seen that the employee benefit expenses for the year

ending 31.03.2014 was Rs.1.13 crores and for the year ending 31/03/2015 it was Rs.1.25 crores and for the year ending 31/03/2016 it was Rs.1.57 crores and for the year ending 31/03/2017 the employee benefit expense was Rs.1.56 crores. Though the documents produced are incomplete and cannot be relied on for the purpose of showing financial constrains it would definitely prove that financial constrains was not reason for delayed remittance of contribution.

6. The learned Counsel for the respondent pointed out that the documents now produced by the appellant would show that the wages of the employees were paid in time. When the wages of the employees are paid the employees' share of contribution is deducted from the salary of the employees. Non-payment of employees' share of contribution deducted from the salary of the employees is a criminal offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no intentional delay or mensrea in delayed remittance of contribution atleast to the extent of 50% of the contribution.

7. The learned Counsel for the appellant pleaded that there was delay in initiating the process U/s 14 B of the Act. The learned

Counsel for the respondent argued that there is no limitation as far as assessment of damages U/s 14B is concerned. 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 Life 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.

On the perusal of notice and delay statement it is seen that an average delay in remittance of contribution is more than a year and such delay cannot be wished away stating that there was financial difficulties at relevant point of time.

8. 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 RPF**, 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” .

9. As already pointed out the documents produced by the appellant will not prove the financial constrains of the appellant establishment. However it would show that the appellant establishment was incurring losses during the relevant point of time.

Taking into account the losses incurred by the appellant establishment is entitled for some relief as regards the damages U/s 14B of the Act.

10. 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.

11. 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