



सत्यमेव जयते

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

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

(Friday the 12th day of March, 2021)

APPEAL No.106/2018

Appellant : Shri.Muhammed Feroch
Kedungattuparambil House
Ettumana, Karuvannur
Thrissur - 680711

By Adv.P.Ramakrishnan

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloore
Kochi – 682017

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 08.02.2021 and this Tribunal-cum-Labour Court on 12.03.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/19396/DAMAGES CELL/2015-16/3497 dt.10.05.2016 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 04/2010 to 05/2011 and 09/2001. The total damages

assessed is Rs.1,00,063/-. The interest demanded U/s 7Q of the Act is also being challenged in this appeal.

2. The appellant is a Managing Partner of a firm engaged in manufacturing ceramic tiles under the name M/s.Kap Kin Ceramics. The factory and the office is closed from 08/2010. All the employees left the service after receiving compensation. The business of the appellant is finally closed and is not in existence since then. The appellant establishment was covered under the provisions of the Act and contribution of its employees were remitted with the respondent till 08/2010. The respondent was also informed of the closure of the appellant establishment. While so the appellant received a “notice of demand to defaulter” dt.20.09.2017 demanding damages and interest for the period from 04/2010 to 05/2011. A copy of the demand notice is produced and marked as Annexure A1. The appellant filed W.P.(C) no.34700/2017 before the Hon’ble High Court of Kerala. In the counter affidavit the respondent claimed that the said demand was issued in pursuance of order issued U/s 14B and 7Q on 10.05.2016. The said orders were never served on the appellant. Hence the Hon’ble High Court of Kerala directed the respondent to serve copies of the Sec 14B and 7Q orders to the appellant vide order dt.19.02.2018. A copy of the judgment of the Hon’ble High Court in W.P.(C) no.34700/2017 is produced and marked as Annexure A4. Despite the direction the respondent failed to provide

copies of the orders U/s 14B and 7Q. Hence a representation dt.22.03.2018 is sent to the respondent which is produced and marked as Annexure A5. The respondent failed to provide the copies of the 14B and 7Q order so far. However the appellant is filing this appeal on the basis of the enclosures along with the counter affidavit filed by the respondent in W.P.(C) no.34700/2017.

3. The respondent filed counter denying the above allegations. The appellant made remittance in respect of the establishment belatedly during the period 04/2010 to 05/2011. The delay in remittance attracts damages U/s 14B and interest U/s 7Q of the Act. The Sec 14B and Sec 7Q orders were forwarded by registered post to the appellant on 19.05.2016, but the documents were returned by the Postal authorities with the remark "Address abolished, returned to sender". However in compliance with the orders of the Hon'ble High Court dt.19.02.2018 the copies of the orders were again forward to the appellant on 16.04.2018. The appellant acknowledged the receipt of the orders vide Exbt.2. Hence the contention of the appellant that the respondent has not complied with the direction of the Hon'ble High Court and has not issued copies of the orders is completely incorrect and is denied by the respondent.

4. It is seen that the appellant was not in receipt of the summons leading to the impugned orders U/s 14B and 7Q of the Act. The impugned orders are set ex-parte. According to the learned Counsel for the appellant, the partnership

firm was closed in 08/2010 and thereafter there were no employees left and the appellant has not paid any contribution. According to the learned Counsel for the respondent, the appellant continued paying contribution upto 05/2011. However there was delay in remittance of such contribution and therefore the remittance will attract damages U/s 14B of the Act and also interest U/s 7Q. It is seen that the appellant did not receive the impugned orders and therefore approached the Hon'ble High Court of Kerala in W.P.(C) no.34700/2017 and the Hon'ble High Court vide order dt.19.02.2018 directed the respondent to provide copies of the impugned orders. According to the appellant, the respondent did not provide the copies even after direction by the Hon'ble High Court. The respondent however produced the copy of the forwarding letter dt.16.04.2018 forwarding the copies of the order and the acknowledgement card dt.20.04.2018 issued by the Postal Department having delivered the impugned orders to the appellant. Hence the claim of the appellant that the respondent did not sent the copies of the impugned order even after the direction by the Hon'ble High Court cannot be accepted.

5. The dispute is with regard to the fact that the appellant establishment is closed from 08/2010 and there no contribution was paid by the appellant thereafter. According to the respondent the organisation continued receiving contribution upto 05/2011 belatedly and hence there is no legal prohibition in

initiating action U/s 14B and 7Q of the Act. It is also seen that the impugned orders are issued without hearing the appellant. The disputes raised in this appeal are question of facts which can be proved only through documents. There is no documentary proof to support the claim of the appellant as well as that of the respondent. Hence it is not possible to finally decide the matter in this appeal.

6. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that the issues involved in this appeal is required to be re-adjudicated by the respondent.

Hence the appeal is allowed, the impugned orders are set-aside and the matter is remitted back to the respondent to re-assess the damages and interest within a period of 3 months after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer