



सत्यमेव जयते

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

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

(Monday the 14th day of December, 2020)

APPEAL No.138/2019
(Old No.676(7)2015)

Appellant : M/s.Thankavilas Cardamom Estate
Kalkoonthal
Nedumkandam P.O.
Idukki - 685553

By M/s.B.S.Krishnan Associates

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Thirunakkara
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 11.12.2020 and this Tribunal-cum-Labour Court on 14.12.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/2178/APFC/Penal Damage/2015/18537 dt.02.03.2015 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for delay in remittance of provident fund contribution for the period from 14.03.2006 to 26.12.2014. The total

damages assessed is Rs.3,60,617/-. The demand of interest U/s 7Q is also being challenged in this appeal.

2. The appellant is a cardamom estate. The respondent initiated action U/s 7A of the Act for assessing dues in respect of non enrolled employees for the period from 04/2008 to 08/2013. The respondent issued Annexure A1 order assessing the dues of Rs.22,68,781/-. Since the calculation was not apparently correct, the appellant filed a review petition U/s 7B of the Act on 20.02.2015. The appellant, however, remitted the admitted amount of dues during the pendency of Sec 7B review petition. The appellant received a notice directing to show cause why damages shall not be levied for belated remittance of contribution and also issued impugned orders assessing damages and interest. The 7B review petition was still pending with the respondent.

3. The respondent filed counter denying the above allegations. The Enforcement Officer of the respondent vide his inspection report dt.07.10.2013 reported that the appellant failed to enroll 51 employees for the period from 04/2008 to 08/2013. After affording proper opportunity the respondent assessed an amount of Rs.22,68,781/- vide order dt.21.01.2015. The appellant remitted Rs.19,67,700/- leaving a balance of Rs.3,01,081/-. Since there was delay in remittance, action U/s 14B of the Act was initiated

for delayed remittance of contribution for the period from 05/2006 to 03/2014. From Annexure 2 delay statement, it is clear that remittances upto 07.11.2014 only was taken into account for assessing the damages. During the enquiry, delay in remittance for the period from 05/2006 to 12/2009 and 04/2008 to 03/2014 were admitted and accordingly the impugned order was issued. It can be seen that the appellant paid only Rs.19,67,700/- against the assessed dues of Rs.22,68,781/-. Action for assessing damages was initiated only against the amount admitted and remitted by the appellant. The application for review U/s 7B was filed by the appellant on 20.02.2015 and the final orders U/s 7B re-assessing the dues was issued on 23.07.2015.

4. It is clear from the facts of the case that the respondent initiated action for assessing damages when the Sec 7B review application was pending before the respondent. The main issue raised by the learned Counsel for the appellant is that when the review application U/s 7B for finalising the actual amount due to be remitted by the appellant was pending, the respondent initiated action for assessing dues U/s 14B of the Act. It is seen that the impugned order assessing damages for the period from 05/2006 to 03/2014 was issued on 02.03.2015 whereas the order U/s 7B was issued finalising the dues only on 23.07.2015. It is clear from

the documents produced by the appellant as well as the respondent that the respondent has taken into account only the actual amount remitted by the appellant. Even as per Sec 7B order, the respondent has accepted the amount actually paid by the appellant. Hence the argument of the learned Counsel for the respondent that no prejudice was caused to the appellant even if the 14B order was issued during the pendency of Sec 7B review application is apparently correct. However it is felt that it is not correct to initiate a proceeding for levying damages and penal interest when the quantum of dues to be paid by the appellant is not finalised by the respondent himself under a quasi judicial proceedings.

5. The learned Counsel for the respondent argued that the appeal against 7Q order is not maintainable. On a perusal of Sec 7(I) of the Act, it is seen that an order issued U/s 7Q cannot be challenged in an appeal filed U/s 7(I). The Hon'ble Supreme Court in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that appeal against Sec 7Q order is not maintainable. In **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 the Hon'ble High Court of Kerala has also taken a view that no appeal can be maintained against an order issued U/s 7Q of the Act. In view of the above, the appeal against 7Q order is not maintainable. However if there is any change in the

order issued U/s 14B, the respondent shall consequently modify the order issued U/s 7Q also.

6. Considering all the facts and circumstances of this appeal, I am inclined to hold that the order issued by the respondent U/s 14B of the Act is not legally sustainable. All other issues raised by the appellant may be raised before the respondent and the respondent shall consider all such issues before issuing the final order.

Hence the appeal against Sec 14B order is allowed, the impugned order is set-aside and the matter is remitted back to the respondent with a direction to re-assess the same within a period of 3 months after issuing notice to the appellant. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-
(Presiding Officer)