



सत्यमेव जयते

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

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

(Monday the 19th day of October, 2020)

APPEAL No.139/2019
(Old No.677(7)2015)

Appellant : M/s.Sudarsanam Estate
Kattoothy, Vattappara P.O.
Via Santhanpara
Idukki - 685619

By M/s.B.S.Krishnan Associate

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

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 18.03.2020 and this Tribunal-cum-Labour Court on 19.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/2180/APFC/Penal Damage/2015/18539 dt.02.03.2015 assessing damages U/s 14B of the EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 12/2002 to 02/2010 and 04/2009 to

08/2014. The total damages assessed is Rs.5,82,091/-. 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 cardamom estate covered under the provisions of the Act w.e.f 01.04.2009. An Enforcement Officer of the respondent conducted an inspection and submitted a report dt.12.09.2013 stating that the appellant has not enrolled all the employees during 04/2009 to 08/2013. An enquiry initiated U/s 7A of the Act culminated in an order dt. 13.01.2015 assessing an amount of Rs.24,37,596/-. The appellant filed a review application U/s 7B of the Act dt.20.02.2015. While the review application is pending, the appellant received a notice for levying damages and interest for the same period. Despite adverse weather conditions and crop loss, the appellant arranged funds from various financial institutions by way of loan and remitted the contribution, both the employer and employees as reported by the Enforcement Officer. While the review petition is pending the respondent authority U/s 14B passed the impugned order dt.02.03.2015 imposing damages and interest for delayed payment for the period from 12/2002 to 08/2014. The respondent also issued an attachment order for recovery of 14B and 7Q amount as per Annexure 4. The respondent ought to have taken into account the circumstances under which the delay in

remittance of provident fund contribution occurred and the damages if any assessed shall be of compensatory nature. The respondent ought to have considered the fact that there was no contumacious conduct on the part of the appellant in delaying the contribution.

3. The respondent filed counter denying the above allegations. The fact that there was a 7A order for 53 non-enrolled employees which culminated in the assessment of Rs.24,37,596/- is admitted by the respondent. It is also admitted that the appellant remitted only Rs.21,15,497/- leaving a balance of Rs.3,22,099/-. It is also admitted by the respondent that the appellant filed a review application alleging some mistakes in the 7A order. The Sec 7B review application was received by the respondent on dt. 20.02.2015. The difference in the 7A order claimed by the appellant was to the tune of Rs.3,22,099/-. An order U/s 7B was issued on 23.07.2015 re-assessing the dues as Rs.21,15,497/- as per Annexure R4. The claim of the appellant that the delay in remittance occurred due to adverse weather conditions and crop loss cannot be a ground for delay in remittance of provident fund contribution.

4. No appeal is maintainable against a demand of interest U/s 7Q of the Act. Hence the appeal against 7Q order is not maintainable.

5. 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 remitted by the appellant was pending, the respondent initiated action for assessing damages U/s 14B of the Act for the same period. Since there is no dispute regarding the facts of the case the same is not being repeated again. It is seen that the impugned order assessing damages for the period from 12/2002 to 02/2010 and 04/2009 to 08/2014 was issued vide order dt. 02.03.2015 whereas the actual dues for the period from 04/2009 to 08/2013 was finalised through Annexure R4 order dt.23.07.2015. As already pointed out there is a difference of Rs.3,22,099/- between the 7A order and Sec 7B review order. The learned Counsel for the respondent argued that though the 7B review order was issued only on 23.07.2015, the amount remitted by the appellant as per Sec 7B review order only is taken into account for the purpose of preparing the belated statement and also the assessment of damages. To substantiate its claim the respondent produced Annexure R1 dt.07.01.2015. It is seen that the impugned order takes into account the delay in remittance for the period from 12/2002 to 02/2010 and also a further delay for the period from 09/2013 to 08/2014. From the documents produced by the appellant as well as the respondent it is clear that for the delay in remittance of contribution for the period from

04/2009 to 08/2013 the respondent has taken into account the contribution of Rs.21,15,497/- only which is the actual amount remitted by the appellant against the 7A order and subsequently confirmed by the respondent in Sec 7B review order. Hence the claim of the learned Counsel for the respondent that no prejudice is caused to the appellant even if the 14B order is issued during the pendency of Section 7B review application is apparently correct. However it is felt that it is not correct to initiate a proceedings 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.

6. 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 no order issued U/s 7Q can 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. In view of the above, the appeal against Sec 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.

7. Considering all the facts and circumstances of this appeal, I am inclined to hold that the order issued by the respondent 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 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/-

(V. Vijaya Kumar)
Presiding Officer