



सत्यमेव जयते

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

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

(Tuesday the 27th day of April, 2021)

APPEAL No.156/2019

(Old No.844(7)2015)

Appellant : District Project Officer
M/s.Sarva Shiksha Abhiyan
District Officer
Educational Complex
Vayaskarakkunnu
Kottayam - 686001

By Adv.Swamidasan K.N., Govt. Pleader

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

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 19.02.2021 and this Tribunal-cum-Labour Court on 27.04.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/20623/APFC/PD 1(5)/2015/5508 dt.10.06.2015 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01.11.2003 to

29.12.2014. The total damages assessed is Rs.20,45,301/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. Sarva Shiksha Abhiyan is a state implementing agency of Ministry of Human Resource Development, Govt of India. The Sarva Shiksha Abhiyan started in the year 2003. The appellant was brought under the purview of the Act w.e.f. 01.11.2003 by the respondent and the coverage intimation was sent in the year 2010. The respondent recovered the provident fund contribution of the appellant establishment from the Bank account of the state office and district level offices. From 10/2010 the appellant is remitting EPF dues regularly. In spite of seizure of dues, from the Bank account of the appellant during 06/2010, the respondent has now claimed damages and penal interest which is not justifiable. There was no wilful defiance of law or laches on the part of the appellant. The appellant remitted all the contribution which are actually payable. The respondent without application of mind issued the impugned orders. There was no wilful delay on the part of the appellant in belated remittance of provident fund contribution. The respondent ought to have applied his mind to the facts and circumstances of this case before imposing damages at the maximum rate. The respondent ought to have found the damages must have some correlating with the loss suffered. The respondent

authority ought to have considered the mitigating factors while quantifying damages.

3. The respondent filed counter denying the allegations. Since there was delay in remittance of contribution for the period from 11/2003 to 08/2012 and 12/2012 to 10/2014 a notice was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded to the appellant establishment. An opportunity for personal hearing was also given on 22.01.2015. The Project Officer of the appellant attended the enquiry and requested 2 weeks time for verifying the delay statement. The enquiry was adjourned to 06.02.2015. The authorised representative of the appellant attended the hearing on 06.02.2015 and pointed out that dues for the month 10/2012 was paid within the stipulated time limit. Further the representative also admitted that there was delay in remittance for the period from 11/2003 to 10/2014. Since the appellant proved that the remittance for the month for 10/2012 was made within the stipulated time, the same was excluded from the statement of damages. The impugned orders were issued after excluding the damages and interest for the month 10/2012. The appellant establishment is covered under the provisions of the Act from 01.11.2003. As per Para 30 of the EPF Scheme, the employer shall in the first instance pay both the contributions payable by himself and also on behalf of

the employees engaged by him directly or through a contractor. The appellant ought to have approached the respondent when the employment strength reached 20 as on 01.11.2003. The appellant never approached the respondent nor started compliance as required under the statute. It is only through an inspection conducted by the Enforcement Officer that the appellant establishment was brought under the purview of the Act w.e.f. 01.11.2003. In **Ajanta Offset and Packaging Ltd Vs RPFC**, 2004 (2) LLJ 915 the Hon'ble High Court held that the provisions of the Act apply "proprio vigour" and all that authorities are required to do is to allot a code number for administrative convenience. If there is some delay in allotment of code number by the authorities, the establishment will not be absolved of the liabilities under the Act. In **Elegant Garments Vs RPFC**, 2007 (1) LLN 803 the Hon'ble High Court held that the delay in allotment of code number will not be a ground for setting aside the levy of damages.

4. Interest demanded U/s 7Q of the Act is not appealable U/s 7(I) of the Act.

5. The appellant establishment is covered under the provisions of the Act in the year 2003. The appellant is a centrally sponsored scheme in partnership with State govt. The Sarva Shiksha Abhiyan was implemented in the State for providing continuous support for elementary and primary education.

The appellant provides for a variety of interventions including opening of new schools and alternate schooling facilities, construction of schools and additional class rooms and providing drinking water etc. The respondent assessed the dues for the period from 11/2003 to 08/2012 and the appellant remitted the whole amount. The appellant was covered w.e.f. 01.12.2003 and the fact of extension of provident fund was communicated after a lapse of 7 years. According to the learned Counsel for the respondent the appellant ought to have approached the respondent when the appellant met the statutory requirements for coverage under the provisions of the Act. EPF & MP Act, acts on its own force and vigore and it is not for the respondent to approach the appellant to secure compliance. However the respondent noticed that the appellant establishment is not complying under the provisions of the Act during 2010 and accordingly on the recommendation of the Enforcement Officer a code number was allotted to the appellant establishment. According to the learned Counsel for the respondent, the appellant has not pleaded any mitigating circumstances for a delay of more than 10 years in remitting the provident fund contribution. It is true that allotment of a code number is not mandated under any provisions of the Act and Schemes. However compliance without a code number will definitely lead to complications to track the remittances made by an establishment. The appellant has not offered any

explanation for starting compliance when they satisfied the statutory requirements. A delay of more than 7 years in getting the appellant establishment covered, which is a statutory requirement cannot be ignored. According to the learned Counsel for the appellant, there was no mensrea in belated remittance of contribution. However according to the learned Counsel for the respondent, the non compliance itself is a violation of the provisions of the Act and Schemes and therefore the appellant cannot claim that there was no intentional delay in remittance of contribution. In the circumstances explained above, it is not possible to hold that the appellant is fully responsible for the delay and no mensrea can be attributed for the delayed remittance of contribution, till 10/2010.

6. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed as per the impugned order.

7. The learned Counsel for the respondent pointed out that no appeal can be filed against an order issued U/s 7Q of the Act. Sec 7(l) of the Act do not specify any appeal from an order issued U/s 7Q. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that Sec 7(l) do not

provide for an appeal from an order issued U/s 7Q of the Act. Hence appeal against Sec 7Q order is not maintainable.

Hence the appeal against Sec 14B order is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages. The order issued U/s 7Q of the Act is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer