



सत्यमेव जयते

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

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

(Monday the 15<sup>th</sup> day of March, 2021)

**APPEAL No.223/2019**  
(Old No.1314(7)2014)

Appellant : M/s.Travancore Paper Mills Pvt Ltd  
Kaduvinal P.O., Vallikunnam  
Mavelikkara  
Alappuzha - 688001

By Adv.K.P. Mehaboob Sheriff

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

This case coming up for final hearing on 05.02.2021 and this Tribunal-cum-Labour Court on 15.03.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KCH/15849/DAMAGES CELL/2014/8687 dt.14.11.2014 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 04/2009 to 01/2014. The total damages assessed is

Rs.1,98,134/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. Appellant is a small scale industrial unit manufacturing craft paper. The appellant is covered under the provisions of the Act w.e.f. 13.11.1997. The capacity utilisation of the appellant company vary from 27% to 50% during the relevant point of time. The under utilisation of capacity was largely due to non availability of power and recession in the market coupled with serious financial constraints. The accumulated loss of the company was Rs.601.12 lakhs with a cash loss of Rs.375.52 lakhs. In spite of the best efforts made by the appellant, it could not avert the company falling to sickness. Govt of Kerala declared the unit as 'sick' vide Govt order dt.27.08.1988 for availing rehabilitation facilities. The appellant company approaches BIFR for framing a revival scheme. In the meanwhile the respondent initiated action for assessing damages U/s 14B of the Act for delayed payment of contribution. The appellant approached the EPF Appellate Tribunal for earlier assessment of damages and the Appellate Tribunal vide order dt.21.10.2010 modified the order and directed the respondent to re-assess the liability at 17% inclusive of interest. A true copy of the order passed by EPF Appellate Tribunal in ATA no.1012(7)/2005 and ATA no.93(7)/2010 are produced and marked as Exbt. P2 and P2(a). All these facts were brought to the notice of the respondent authority through a written statement filed on

23.05.2014. A copy of the written statement is produced and marked as Exbt.P3. Without considering any of the representation, the respondent issued the impugned orders.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in remittance of contribution for the period from 04/2009 to 01/2014. Belated remittance of contribution will attract damages U/s 14B and interest U/s 7Q of the Act. The respondent therefore issued a notice dt.13.03.2014 to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act read with Para 32A of EPF Scheme shall not be levied for belated remittance of provident fund dues for the above period. The appellant was also given an opportunity for personal hearing on 11.02.2014. A representative of the appellant along with a Counsel appeared for hearing on 23.05.2014 and filed Exbt.P3 statement stating that the establishment is a 'sick company'. The appellant also pleaded that the delay was due to acute financial stringencies. The authorized representative also submitted that the delay statement sent along with the summons is verified and found to be correct. The claim of the appellant that the appellant unit is declared 'sick' by State Govt has no relevance with regard to assessment of damages. The appellant also claimed that their application for declaring the unit 'sick' is pending before BIFR. The appellant failed to furnish any details

regarding the case pending before BIFR. It is upto the appellant to substantiate their claim that a proceeding is pending before the BIFR to claim the benefits under the second proviso of the Sec 14B of the Act. The appellant cannot ignore the statutory liability cast upon him under Para 30 and 38 of EPF Scheme to remit the monthly contribution payable under various EPF accounts within 15 days of close of every month. Having failed to comply with the statutory requirement, the appellant cannot claim any leniency with regard to the assessment of damages U/s 14B of the Act. Approximately 50% of the contribution payable by the appellant represents the employees' share of contribution deducted from the salary of the employees. The appellant cannot plead any financial difficulty for remitting that contribution within the stipulated time. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act and that the penalty is attracted as soon as contravention of statutory obligations as contemplated by the Act is established and therefore, the intention of parties committing such violation becomes immaterial. In **Gowri Spinning Mills (P) Ltd Vs APFC**, 2007 (2) LLJ 140 a full Bench of the Hon'ble High Court of Madras held that the extend of immunity or exemption cannot be extended beyond what is allowed in terms of the second proviso to Sec 14B. In order to render the second proviso

applicable to an establishment it is mandatory under the statute that the establishment should be a sick industry in terms of SICA 1985, a scheme should have been sanctioned by the BIFR under SICA, 1985 for rehabilitation and that the reduction or waiver of damages would be subject to the terms and conditions specified in the scheme. The documents produced by the appellant in this appeal will prove that the appellant is a chronic defaulter in remittance of provident fund contribution.

4. The only ground pleaded by the appellant in this appeal is that of financial difficulties for not remitting the contribution in time. The appellant failed to produce any records or documents to substantiate their claim of financial difficulties. In **M/s.Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **M/s.Sreekamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, W.P.(C)no. 10181/2010 the Hon'ble High Court of Kerala held that " if it is shown that one was under severe financial constraints on account of reasons stated and **the documents in support of the said fact is produced**, the authorities are bound to consider the same in a pragmatic manner and not taking a pedantic approach ". Non production of records to substantiate their claim is in fact fatal to the claim of the appellant. The learned

Counsel for the appellant also pleaded that the appellant company is registered under BIFR. According to the learned Counsel for the respondent the appellant is not a company declared 'sick' under SICA and no scheme is approved by BIFR to claim the benefits of second proviso to Sec 14B of the Act. At any cost after passing of the Insolvency and Bankruptcy Code 2016, SICA has no relevance and if the appellant is interested in pursuing the matter they ought to have taken up the issue under the Insolvency and Bankruptcy Code 2016. When the matter was taken up for hearing, the learned Counsel for the appellant pointed out that the appellant unit is closed and is under liquidation. No documents were produced to substantiate the claim of the appellant. However considering the fact that the EPF Appellate Tribunal has also considered the financial stringencies in its earlier proceedings, it is felt that the appellant establishment is entitled for some relief in terms of damages.

Considering the facts and circumstances of this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 50% of the damages assessed U/s 14B of the Act.

5. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On 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. The Hon'ble Supreme Court in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC

295 held that no appeal is maintainable 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)no.234/2012 also held that an appeal against 7Q order is not maintainable.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 50% of the damages assessed U/s 14B. The appeal filed against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer