



सत्यमेव जयते

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

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

(Monday the 1st day of March, 2021)

APPEAL Nos.234/2018 & 264/2018
(Old Nos.A/KL-22/2017 & A/KL-43/2017)

Appellant : M/s.M.S.Staffing Solutions
Nandiyad, 33/3158, B3, 2nd Floor
Vennala, Janatha Road
Kochi – 682028

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

By Adv.S. Prasanth

This case coming up for final hearing on 02.02.2021 and this Tribunal-cum-Labour Court on 01.03.2021 passed the following:

ORDER

Appeal no.234/2018 is filed from order no.KR/KCH/27134/DAMAGES CELL/EXPARTE/PPF/2015 dt.21.04.2015 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/2011 to 10/2012. The total damages assessed is Rs.2,55,469/-. The interest demanded U/s 7Q of the Act for the same period is

also being challenged in this appeal. The appeal against 7Q order was dismissed as not maintainable vide order dt.16.09.2019.

2. **Appeal no.264/2018** is filed from order no.KR/KCH/27134/DAMAGES/T-4/2016-17/17443 dt.08.03.2017 assessing damages for belated remittance of contribution for the period from 11/2012 to 01/2014. The total damages assessed is Rs.1,22,929/-.

3. Since common issues are raised both the appeals are heard and disposed of by a common order.

4. The appellant is an HR outsourcing company engaged in recruitment, contract staffing, statutory audit, statutory and payroll outsourcing and data management services. Though the change in address of the appellant was communicated to the respondent, the respondent issued the summons in the old address which led to an ex-parte order against the appellant. The appellant came to know regarding the assessment of damages only when the recovery action was initiated against them. The provident fund contribution is required to be paid by 15th of the close of every month. However due to heavy financial problem there was delay in remittance of contribution. The delay in remittance of contribution was not intentional and there was no mensrea in belated remittance of contribution. The appellant company is running in huge loss and had to roll the provident fund amount to pay the employees salary and

therefore there was delay in remittance of provident fund contribution during 2011-12. Though the respondent authority has discretion to reduce the damages, the same was not considered by the respondent. The appellant is not a habitual defaulter.

5. The respondent filed counter denying the above allegations. The appellant establishment is a chronic and persistent defaulter in remittance of provident fund contribution from the date of coverage. It is noticed that there was delay in remittance of provident fund contribution for the period 01/2011 to 01/2014. The delay in remittance of contribution will attract penal damages U/s 14B of the Act read with para 32A of EPF Scheme. Accordingly the respondent issued a notice to the appellant to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing on 21.05.2014. A detailed delay statement showing the month wise details of belated remittance was also sent along with the notice. The notice in Appeal no.234/2018 was returned. In Appeal no.264/2018 a representative of the appellant attended the hearing and admitted the delay in remittance of provident fund contribution. As requested by the appellant, a copy of the impugned order in Appeal no.234/2018 was handed over to the appellant on 15.02.2017. It is pointed out that the

financial constraints of the appellant establishment do not absolve him of the responsibility and liabilities towards his employees. The provident fund contribution is a statutory liability which are required to be complied with irrespective of the financial constraints of the establishment. In **Hindustan Times Ltd Vs UOI**, AIR 1998 SC 688 the Hon'ble Supreme Court held that bad financial condition is no defence for delayed payment of contribution. The appellant delayed remittance of even the employees' share of contribution and thereby committed the offence of breach of trust. In **Chairman, SEBI Vs Sriram Mutual Fund**, Civil Appeal no.9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act. It was also clarified that penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant.

6. The learned Counsel for the respondent raised two preliminary objections. One is with regard to limitation. According to the learned Counsel, as per Rule 7(2) of the EPF Appellate Tribunal(Procedure Rule) 1997, an appeal is to be filed within a period of 60 days from the date of the impugned order. The Tribunal can extend the period by a further period of 60 days. According to the learned Counsel for the respondent, the appeal is filed beyond 120 days and

hence it is barred by limitation. However it is seen that in para 8 of the counter the respondent has admitted that a copy of the impugned order was handed over to the appellant only on 15.02.2017. Taking 15.02.2017 as the date of receipt of the order by the appellant, the appeal is within the limitations and hence the preliminary objection of the respondent is rejected.

7. The learned Counsel for the respondent also pointed out that there is no provisions to file an appeal against an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that there is no provisions to file appeal 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 against 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) 234/2012 also held that no appeal is maintainable from an order issued U/s 7Q of the Act.

8. The only ground pleaded by the appellant in these appeals for belated remittance of contribution is financial difficulties of the appellant establishment. According to the learned Counsel for the respondent, the appellant failed to produce any documents before the 14B authority to substantiate his case of financial difficulties. No documents are produced in this appeal also to prove the claim of the appellant that they had financial difficulties during the relevant point of time. The learned Counsel for the respondent argued that the

appellant is a chronic defaulter from the date of coverage and therefore deserves no leniency with regard to assessment of damages U/s 14B.

9. 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 view of the above, the non production of documents to substantiate the claim of financial difficulties is fatal to the appellant establishment. The learned Counsel for the respondent also argued that even the employees' share of contribution deducted from the salary of the employees is not paid by the appellant in time. Non remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea in belated remittance of contribution. Further the appellant specifically admitted in para 9 of the appeal memo that the appellant company is running in a huge loss, and **had to roll the provident fund amount to pay the employees' monthly salaries.** This clear admission by the appellant amounts to breach of trust U/s 405/406 of Indian Penal Code.

10. Considering all the facts, circumstances and pleadings in these appeals, I am not inclined to interfere with the impugned orders.

Hence the appeals are dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer