



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 No.234/2019

(Old No.426(7)2015)

Appellant : M/s.Madhavan Inc
Pathirippally P.O.
Alapuzha - 688521

By Adv.R.Sankarankutty Nair

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

By Adv.Sajeev Kumar K. Gopal

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

Present appeal is filed from order no.KR/KC/15537/DAMAGES CELL/T(1)/2003/8103 dt.30.09.2003 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 12/1996 to 03/2000. The total damages assessed is

Rs.3,51,617/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is an establishment engaged in the manufacture and export of coir products. The respondent issued Annexure A1 coverage memo dt.20.05.1997 covering the establishment w.e.f. 31.10.1996. Thereafter an enquiry U/s 7A was initiated and vide order dt.03.05.1999 the respondent issued an order assessing the contribution payable for the period from 11/1996 to 12/1998. A copy of the order is produced and marked as Annexure A2. According to the respondent, the contribution period from 12/1996 to 03/1997 were remitted on 05.02.1999 and contribution for 04/1997 to 03/1998 was remitted on 22.06.1999 and payment for the period 04/1998 to 07/1999 was remitted on 19.07.1999, payment for the period 08/1999 to 11/1999 was remitted on 27.11.1999 and for the period 12/1999 to 27.01.2000 and for the period 01/2000 to 03/2000 the contribution was made on 31.03.2000. The respondent waived the employees' share of contribution for the pre-discovery period from 11/1996 to 04/1997. There was no wilful delay in paying the contribution. Initially there was delay because there was delay in extending coverage. Without considering the above fact, the respondent issued the impugned orders.

3. The learned Counsel for the respondent pointed out that the appeal is barred by limitation. According to the learned Counsel for the appellant, the appeal was filed on 20.11.2007 within the extended time granted by the Hon'ble High Court in W.P.(C) no.12047/2004. Further he pointed out that the appellant re-submitted the file in 2015 as per the direction of the EPF Appellate Tribunal, New Delhi. According to the learned Counsel for the respondent, even if he accept the argument of the learned Counsel for the appellant, there is still a delay of one day in filing the appeal. If we consider the one month time granted by the Hon'ble High Court of Kerala in IA no.14007/2007 in W.P.(C) no.12047/2004 from the date of the order, the appeal is filed within the extended time granted by the Hon'ble High Court.

4. According to the learned Counsel for the respondent, the appellant is a chronic defaulter in remitting provident fund contribution. The EPF & MP Act, acts on its own force and the appellant cannot claim the delay in allotment of code number as a ground for belated remittance of contribution. It is admitted fact that there was delay in remittance of contribution during the period from 12/1996 to 03/2000. When there is delay in remittance of contribution, the appellant is liable to pay damages U/s 14B of the Act read with para 32A of EPF Scheme. Hence a notice was issued to the appellant directing him to show cause why damages shall not be levied for belated remittance of contribution. A

delay statement showing the details of contribution, the due date and the actual date of payment was also communicated to the appellant. The appellant attended the enquiry and admitted the delay in remittance of contribution. Accordingly the impugned orders were issued.

5. According to the learned Counsel for the appellant, there was initial delay in remittance of contribution as there was delay in covering the establishment under the provisions of the Act. As per Annexure A1, the appellant establishment was covered w.e.f. 11/1996 on 20.03.1997. It is clear from the delay statement that the appellant started compliance only w.e.f. 05.02.1999. According to the learned Counsel for the appellant the respondent initiated an enquiry U/s 7A of the Act for assessing dues for the period from 12/1996 to 12/1998 and the final orders were issued only on 03.05.1999. The appellant started compliance even before the assessment orders were issued and therefore the appellant cannot be held responsible for belated remittance of contribution. It is not possible to accept the claim of the learned Counsel for the appellant that the delay shall be counted only from the date of issue of the assessment order. The appellant is liable to remit contribution from the due date irrespective of the fact whether a coverage memo is issued by the respondent. However the delay in allotment of provident fund number can be counted for the purpose of accommodating the claim of the appellant that

there was no mensrea in belated remittance of contribution for the period from 11/1996 to 04/1997. It is also seen that the respondent has waived the employees' share of contribution for the period from 11/1996 to 04/1997. However the appellant cannot escape the liability of paying damages for belated remittance of contribution for the period from 05/1997 to 03/2000. The learned Counsel for the respondent also pointed out that for the period from 05/1997 to 03/2000 the appellant was also liable for breach of trust as he failed to remit the employees' share of contribution deducted from the salary of the employees in time. The employees' share of provident fund contribution accounts for 50% of the total contribution and non remittance of the same is an offence U/s 405/406 of IPC. Having committed an offence of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution.

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 U/s 14B of the Act.

7. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(I), it is seen that no appeal is provided 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 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 can be filed from an order issued U/s 7Q of the Act. The learned Counsel for the appellant however submitted that the interest U/s 7Q had already been deposited by the appellant.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer