



सत्यमेव जयते

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

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

(Monday the 4<sup>th</sup> day of January, 2021)

**APPEAL No.300/2019**

Appellant : M/s.Kerala State Cashew  
Development Corporation Ltd  
P.B.No.13, Cashew House  
Kollam - 691001

By Adv.Vipin P. Varghese

Respondent : The Regional PF Commissioner  
EPFO, Regional Office  
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &  
Megha A.

This case coming up for final hearing on 09.12.2020 and this Tribunal-cum-Labour Court on 04.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KLM/2798/PD/2018-19/235 dt.29.05.2019 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of provident fund contribution for the period from 05/2014 to 01/2016. The total damages assessed is Rs.57,15,497/.

The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. There was a direction by the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013 dt.18.07.2016 directing the respondent to return the amount of Rs.53,70,634/- illegally recovered from the accounts of the appellant by the respondent organisation. The Hon'ble High Court in the above writ petition directed the respondent to adjust the amount due to various units from and out of the recovered amount along with an interest of 12% and to return the balance, if any, to the appellant. The respondent herein filed a compliance statement, a copy of which is marked as Annexure A4. As per the compliance statement, the respondent failed to pay the amounts as ordered by the Hon'ble High Court. The respondent in violation of the judgment has illegally adjusted an amount of Rs.27,00,940/- towards penal damages. Adjusting the amount against penal damages is in violation of the order of the Hon'ble High Court. Hence the appellant filed Writ Petition no.10935/2017 before the Hon'ble High Court of Kerala and the Hon'ble Court vide order dt.29.03.2017 granted an interim stay. A copy of the order dt.29.03.2017 is produced and marked as Annexure A5. The writ petition is still pending before the Hon'ble High Court of Kerala. The respondent initiated further action for recovery of damages and interest. The appellant is a Govt of Kerala undertaking and is presently going

through severe financial crisis due to adverse business climate and non-availability of working capital from the Govt. The delay in remittance was only due to acute financial stringencies and non payment was not deliberate and also because huge amounts are required to be returned by the respondent.

3. The respondent filed counter denying the above allegations. The appellant failed to remit statutory contributions in time for the period from 05/2014 to 01/2016. The delay in remittance of contribution will attract damages U/s 14B. Hence the appellant was issued a notice dt.15.02.2019 enclosing there with a delay statement showing the amount of dues, the due date of payment, actual date of payment and the period committed by the establishment. The appellant was also given an opportunity for personal hearing on 27.03.2019. The representative who appeared before the respondent filed a written statement dt.25.03.2019 stating that there are some mistakes in the date of remittance indicated in the delay statement, the delay in remittance was due to financial crisis and that the amount due as per the notice may be adjusted as per the judgment of the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013. On verification of the records, the respondent found that the claim of the appellant regarding the mistakes in the delay statement was correct and therefore necessary corrections were incorporated and was intimated to the appellant on 03.05.2019. The appellant did not object to the

revised delay statement sent to the appellant. Accordingly the impugned orders were issued. For the period between 2009 and 2010, the respondent assessed contribution U/s 7A in respect of trainees pertaining to 24 establishments run by the appellant. Since the appellant failed to remit the amount, the respondent initiated recovery action and recovered an amount of Rs.53,70,634.13. The appellant filed appeals before the EPF Appellate Tribunal, New Delhi and the Appellate Tribunal set aside the orders issued U/s 7A of the Act holding that trainees cannot be treated as employees. Against the aforesaid orders of the EPF Appellate Tribunal, the respondent filed W.P.(C) no.22536/2011 before the Hon'ble High Court which was dismissed by the learned Single Judge of the Hon'ble High Court of Kerala upholding the order of the Tribunal. The W.A. no.1893/2011 filed by the respondent was also dismissed by the Hon'ble High Court. The respondent took action for recovery of the dues relating to further periods. Aggrieved by the said action of the respondent, the appellant filed W.P.(C) no.15194/2013 before the Hon'ble High Court of Kerala contenting that the amounts illegally recovered from the appellant were not returned so far. They also took the plead that if the entire arrears due along with interest leviable U/s 7Q are adjusted, there would be still balance amount payable to the appellant corporation. The appellant continued to default in remittance of contribution for the period from 04/2014 to 03/2016 and the amount was

quantified as Rs.5,13,38,112/- vide order dt.11.05.2016. The Hon'ble High Court of Kerala by a common judgment in W.P.(C)nos.15194/2013, 16856/2015, 26605/2015 and 9613/2016 directing the respondent to return the recovered amount of Rs.53,70,634/- with 12% interest to the appellant. The Hon'ble High Court also directed that the Regional Provident Fund Commissioner or the authorised Officers who are respondents in W.P.(C) no.16856/2015, 26605/2015 and 9613/2016 shall compute the amounts due as on 30.07.2016 along with the levy of Sec 7Q interest and forward the demand to Regional Provident Fund Commissioner, Kollam, the 1<sup>st</sup> respondent in W.P.(C) no.15194/2013. There was also a direction to the Regional Provident Fund Commissioner, Kollam to adjust these amounts from the amount held by them. It was also directed that any arrears due with respect to the factories Kollam shall also be adjusted and after adjusting the amount, if any amount remains, the same shall be paid to the petitioner Corporation. The respondent complied with the above directions. The adjustment statement was also forwarded to the appellant. Since huge amounts to the tune of Rs.5,13,38,112/- is still outstanding from the appellant, the respondent initiated recovery action against the appellant. Aggrieved by the recovery action, the appellant approached the Hon'ble High Court in W.P.(C) no.10935/2017 and the matter is still pending before the Court. In **Sky Machinery Ltd Vs RPF**, 1998 LLR 925 the Hon'ble High Court of Orissa held

that financial crunch will not be sufficient reason for waiving penal damages for delay in deposit of provident fund contribution. In **Hindustan Times Ltd Vs UOI and Others**, 1998 (2) SCC 242 the Hon'ble Supreme Court held that power cut, financial problem relating to indebtedness or delay in realisation of amount paid by cheque or draft are not relevant explanation to avoid the liability for payment of dues. In **Elsons Cotton Mills Vs RPFC**, 2001 (1) SCT 1104(P&H)(DB) the plea of financial crisis was rejected as financial stringencies or poor financial capacity is not a ground for not paying provident fund of poor employees. In **Steel Tubes of India Ltd Vs APFC**, 2012 (3) LLJ 603 the Division Bench of the Hon'ble High Court Madhya Pradesh held that there is no provision whereunder the explanation for delay in payment of amount, due to financial difficulties as offered by the establishment can be a ground to reduce penalty.

4. The learned Counsel for the appellant raised two grounds for reduction or waiver of damages. The 1<sup>st</sup> ground is with regard to the claim of the appellant that huge amounts recovered by the respondent from the appellant is required to be refunded with interest at the rate of 12% as directed by the Hon'ble High Court in W.P.(C) no.15194/2013. According to the learned Counsel for the respondent, the amount of Rs.53,70,634/- along with 12% interest which was directed to be refunded has already been adjusted as per Annexure A4 statement. The Hon'ble High Court of Kerala in W.P.

no.15194/2013 has taken note of the fact that various writ petitions considered by it, pertain to assessment orders made against various units in different parts of the State. W.P.(C)no.16856/2015 challenged the assessment made for the period from 04/2014 to 09/2014 and W.P.(C) no.26605/2015 challenged the assessment made for the period from 10/2014 to 05/2015 by the Assistant Commissioner at Sub Regional Office, Kannur. It also noticed that W.P.(C)no.9613/2016 is with respect to the interest and damages levied by competent authority against the unit at Irinjalakuda with regard to the delay in remittance of contribution. The Hon'ble High Court finally concluded that

“ In the above circumstances, it is only proper that the petitioner be granted the amounts due with 12% interest, since the recovery is said to be against the provisions of the EPF Act, which levies an interest @ 12%. The Regional Provident Fund Commissioners or the Authorised Officer, who are the respondents in W.P.(C) nos.16856/2015, 26605/2015 and 9613/2016, shall compute the amounts due as on 30.07.2016 along with the levy of Sec 7Q interest and forward such computation to the Regional Provident Fund Commissioner, Kollam, the 1<sup>st</sup> respondent in W.P.(C) no.15194/2013. **It is made clear that no damages need be levied with respect to the demands made, covered by the above writ petitions, since the damages in the nature of a**

**deterrent measure, need not be levied against the petitioner in the peculiar facts arising in the case.** The 1<sup>st</sup> respondent in W.P.(C) no.15194/2013 shall, on receipt of such computation from the various Regional Provident Fund Commissioners, transfer the amount demanded to the said Regional Provident Fund Commissioners within two weeks from the date of receipt of such computation, including Sec 7Q interest for the period after 30.07.2016 till payment. Any arrears with respect to the factories at Kollam shall also be adjusted from the amounts with due notice to the petitioner-Corporation, which exercise shall also be completed within a period of one month from the date of receipt of a certified copy of this judgment. After adjusting the said amounts, if any amount remains, from the amount of Rs.53,70,634.13 and 12% interest calculated from the date of respective recoveries made, the same shall also be paid to the petitioner-Corporation. The entire exercise shall be completed within the period specified herein above “.

5. One of the issue is to be examined is whether the above order of the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013, in anyway, prohibits the respondent from initiating the proceedings which led to the issue of the impugned orders. The Hon'ble High Court of Kerala in the above cited judgment



has made it clear that no damages need be levied with respect to the demand made **covered by the above writ petitions**. W.P. nos 16856/2015 and 26605/2015 pertains to assessments made by the Kannur office of Employees Provident Fund Organisation. W.P.(C) no.9613/2016 pertains to interest and damages levied by competent authority having jurisdiction over Irinjalakuda. W.P. no.15194/2013 is with respect to damages and interest due for the period from 02/2005 to 01/2006 and in respect of KR/TVM/1227, Factory no.9, Kilimanoor of the appellant establishment. Hence the assessment of dues in respect of respondent's office at Kollam in W.P no.15194/2013 is only with respect to the dues assessed for a particular period from 02/2005 01/2006. The impugned orders are issued in respect of the unit covered under KR/KLM/2798 for the delayed remittance of contribution for period from 03.07.2013 to 31.03.2016. From the above analysis, it is clear that the judgment of the Hon'ble High Court of Kerala in W.P.(C) no.15194/2013 will not in any way prohibit the respondent from assessing damages for belated remittance of contribution in respect of the unit covered under KR/KLM/2798. According to the learned Counsel for the appellant, the correctness of the adjustment given by the respondent vide Annexure A4 statement is being considered by the Hon'ble Court in W.P. no.10935/2017 and the matter is pending. However the claim of the appellant that Rs.27,00,940/- is adjusted against damages is

apparently not correct as it seen from annexure A4 (8) that the amount was adjusted against interest U/s 7Q of the Act of various units of the appellant in Kollam jurisdiction. In view of the above, the proceedings initiated by the respondent against the unit of the appellant covered under code no.KR/KLM/2798 is legally correct.

6. The only other ground pleaded by the learned Counsel for the appellant in this appeal is with regard to financial difficulties of the appellant establishment. According to the learned Counsel for the respondent, the appellant failed to produce any records regarding the financial constraints before the respondent authority U/s 14B of the Act. The appellant failed to produce any documents in this appeal as well. When financial constraints are pleaded as a reason for the delayed payment it is upto the appellant to establish the same before the authority U/s 14B of the Act. Having failed to do so, the appellant cannot plead the benefit of financial difficulties for waiver or reduction of damages U/s 14B of the Act. The Hon'ble High Court of Delhi in **M/s.Kee Pharma Ltd Vs APFC**, 2017 LLR 871 held that if the appellant failed to produce documents to substantiate the financial constraints and the mitigating circumstances before the 14B authority and also in the appeal, it is not possible to interfere with the findings of the 14B authority.

7. The learned Counsel of the appellant also pointed out that the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Non remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405/406 Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea in belated remittance of contribution atleast to the extend of employees' share of contribution which amounts to 50% of the total contribution.

8. 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) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided 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) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act.

9. Considering all the facts, circumstances and pleadings, I am not inclined to interfere with the impugned orders.

Hence the appeal against Sec 14B order is dismissed as there is no merit in the appeal. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer