



सत्यमेव जयते

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

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

(Monday the 5th day of April, 2021)

APPEAL No.375/2018

(Old No.514(7)2014)

Appellant : M/s.Manappuram Asset Finance
D.No.III/105, Opp Natika Firka
Co-operative Bank
Near Chanthappadi Jn.
Valappad, Thrissur - 680567

By C.B.Mukundan

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 01.03.2021 and this Tribunal-cum-Labour Court on 05.04.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/29040/DAMAGES CELL/2014 /18408 dt.17.03.2014 assessing damages U/s 14B of the EPF & MP Act,1952 (hereinafter referred to as 'the Act') for belated payment of contribution for the period from 02/2012 to 10/2012. The total damages

assessed is Rs.1,36,773/-. The interest demanded U/s 7Q for the same period is also being challenged in this appeal.

2. The appellant is a public limited company engaged in non banking financial activities. From the very beginning of the commencement of the activities of the appellant establishment, the employment strength was beyond 20 and therefore the appellant vide its letter dt.21.03.2012 approached the respondent's office for allotment of code number so as to facilitate the appellant to remit the provident fund contribution. The respondent ought to have allotted a provident fund code number within 3 days of the receipt of the request for registration. Since the respondent failed to provide the registration the appellant sent two more reminders dt.30.03.2012 and 11.07.2012 requesting them to allot code number at the earliest. It was also brought to the notice of the respondent that the appellant was not in a position to remit the provident fund contribution since the provident fund registration number is not provided to them. The letters are produced and marked as Annexure A4 and A5. The respondent took 7 months to allot the code number to the appellant and the communication allotting code number w.e.f. 01.02.2012 was issued to the appellant by the respondent on 16.10.2012. The appellant immediately thereafter remitted the contribution. The appellant thereafter received a

notice dt.01.01.2014 from the respondent informing that the proposal to levy damages and interest alleging delay in the payments made by the appellant. The appellant was also given an opportunity of hearing on 05.02.2014. An authorised representative of the appellant attended the hearing and filed a detailed submission which is produced and marked as Annexure A6. There was no wilful delay on the part of the appellant in delayed remittance of contribution and the delay occurred only because of the delay in allotting the provident fund registration and also the “login name” and password for remitting the contribution.

3. The respondent filed counter denying the above allegations. The appellant defaulted in payment of contribution under various schemes for the period from 02/2012 to 10/2012. The belated remittance of contribution will attract damages U/s 14B read with Para 32A of the EPF Scheme. Hence a notice was issued to the appellant along with a delay statement showing the amount, the due date, the actual date of payment and the delay in remittance. The appellant was also given an opportunity for personal hearing on 05.02.2014. A representative of the appellant attended the hearing. The representative stated that the delay in remittance was due to belated allotment of code number. The respondent is no longer vested with any discretionary power to waive or reduce the penal damages after

the amendment of the Act w.e.f. from 01.09.1991. The Division Bench of the Hon'ble High Court of Mumbai in **UOI Vs Super Processors**, 1993 (1) CLR 457 and **Navinlal K. Shah Vs UOI**, 2004 (100) FLR 146 held that the amended scheme provisions has to be followed while imposing damages.

4. The demand of interest U/s 7Q of the Act cannot be challenged in this appeal as there is no provision U/s 7(I) to file an appeal from an order issued U/s 7Q of the Act.

5. In **M/s.Organo Chemicals Vs UOI**, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court held that the expression 'damages' occurring in Sec 14B of the Act is in substance, the penalty imposed on the employer for breach of the statutory obligation. 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 the provisions of a civil Act and that the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and therefore, the intention of the parties committing such violation becomes immaterial.

6. According to the learned Counsel for the appellant the only reason for delay in remittance of provident fund contribution is the delay on the part of the respondent in allotting provident fund code number. According to the learned Counsel for the respondent the delay in allotment

of code number cannot be a valid ground for not remitting contribution in time and the delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Provident fund registration and allotment of code number is not mandated by any provisions of the Act and Schemes thereunder. However remittance, if any, made by the appellant without a proper registration and a code number can always lead to issue while accounting the remittance to the employees. The Division Bench of the Hon'ble High Court of Madras in **Elegant Garments Vs RPFC**, 2007 LLR 666 (Mad DB) held that mere non allotment of code number or delay in allotment of code number will not justify the late remittance of provident fund contribution since other modes for deposit are available to the appellant. However taking into account the facts and circumstances of this case and also the fact that the appellant was repeatedly reminding the respondent to allot a code number for provident fund remittance, it is not possible to allege any mensrea or intentional delay in remittance of contribution. It is seen that the delay in remittance is only for the pre-discovery period and therefore the appellant is entitled for some relief as far as damages is concerned.

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(I) 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(I) 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.

8. Considering the facts, circumstances, pleadings and arguments in 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. The appeal against 7Q order is not maintainable for the reasons stated above.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer