



सत्यमेव जयते

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

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

(Tuesday the 1st day of December, 2020)

APPEAL No.477/2019
(Old No.465(7)2016)

Appellant : M/s.Periyar Steels (P) Ltd
IDA, Erumathala
Aluva
Ernakulam – 683112

By Adv.P. A. Saleem

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 27.11.2020 and this Tribunal-cum-Labour Court on 01.12.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/19047/DAMAGES CELL/2015/180 dt. 24.02.2016 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated payment of contribution for the period from 11/2008 to 07/2012. The total damages assessed is Rs.1,41,223/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant had, in fact, filed this appeal from 4 separate orders issued by the respondent. Later the appellant filed an IA no.109/2020 to amend the appeal memo to delete two orders and consequently, revise the damages and interest amounts incorporated in this appeal. The Interlocutory Application was allowed and the two orders levying damages and interest were removed reserving the right of the appellant to file another appeal against those orders.

3. The appellant took a non-functioning factory and started production w.e.f. 11/2008. Due to paucity of funds the appellant could not remit the contribution in time. There was no wilful latches or negligence on the part of the appellant. There was no mensrea in delayed payment of contribution. For the period from 11/2008 to 06/2010 no contribution was collected from the salary of the employees. The appellant remitted both the contribution inspite of the fact that the appellant was under severe financial constraints. The letter dt.27.07.2010 submitted to the respondent is produced and marked as Annexure A2. The appellant was under the bonafide belief that the employees' share of contribution will be waived by the respondent in view of the explanations given in Annexure A2 letter. Since the respondent did not concede the request the appellant paid the employees' share of contribution. The letter dt.26.07.2011 is marked as Annexure A3. Thereafter the appellant was regular

in compliance, however with few days of delay. The appellant establishment was being run by another management till 2005. Because of huge loss, they closed down the unit and the appellant took over the management of the company after getting exemption from Govt agencies such as Kerala State Electricity Board. The production started only in the month of 11/2008. The true copy of the exemption received from Kerala State Electricity Board is produced and marked as Annexure A4. A true copy of the certificate issued by District Industries Centre, Ernakulam is produced and marked as Annexure A5. The respondent initiated action for belated remittance of contribution for the period from 11/2008 to 07/2012. The appellant appeared before the respondent and explained the reasons for delayed remittance of contribution by the appellant. Ignoring all the contentions made by the appellant, the respondent issued the impugned orders. In **Wasp Pumps Pvt Ltd Vs Assistant Provident Fund Commissioner**, 2012 LLR 1031 the Hon'ble High Court of Mumbai held that levying damages for non deposit of provident fund contribution upon sick units, without reasons, cannot be legally sustained. In **RPFC Vs Sree Visalam Chitty Funds Ltd**, 2011 LLR 222 the Hon'ble High Court of Chennai held that in the absence of intentional delay in deposit of contribution no damages could be levied. In **RPFC Vs Delta Jute & Industries Ltd**, 1997(10) SCC 384 the Hon'ble Supreme Court held that the revival package will be in jeopardy, if

damages is levied on a sick industry, particularly when they are regular in payment of current contribution.

4. The respondent filed counter denying the above allegations. The appellant was covered under the provisions of the Act w.e.f. 28.02.1999. The appellant delayed remittance of contribution from 11/2008 to 07/2012. The Act mandates that any delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. A detailed delay statement was forwarded to the appellant along with the notice. The appellant was also given an opportunity to appear in person and explain the delay. The Director of the appellant appeared and admitted delay in payment of dues. The appellant also submitted that there was no wilful latches or negligence on the part of the appellant. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India and others**, 1998 (2) SCC 242 held that the default on the part of the employer based on plea of power cut, financial problems relating to other indebtedness or the delay in realisation of amounts paid by cheques, drafts, cannot be justifiable ground for the employer to escape the liability U/s 14B of the Act. Though the appellant pleaded financial difficulties they failed to produce any evidence to substantiate their claim. In **Organo Chemical Industries Vs UOI**, 1979 (2) LLJ 416 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 the breach of statutory obligation. The pre-dominant objective of Sec 14B is to penalise, so that the employer may be thwarted or deterred from making any further defaults. Approximately 50% of the contribution payable by the employer represents employees' share of contribution. The employees' share of contribution is being deducted from the salary of the employees as and when the salary is paid to the employees. 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 obligation as contemplated by the Act is established and therefore, the intention of the parties committing such violation becomes immaterial. The damages collected U/s 14B is utilised to extend benefits to the poor employees and therefore the defaulters should not get any relief at the cost of poor employees for whom the fund is created. The order issued U/s 7Q of the Act is not appealable.

5. The appellant filed a rejoinder along with certified copies of the balance sheet for the years ending 31.03.2009-31.03.2015 as Annexure A6 to A13. The appellant reiterated their claim of financial difficulties. According to the appellant, the respondent did not consider any of the claims made by the appellant before issuing the impugned order.

6. 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(l) 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.

7. The case of the appellant is that the appellant establishment was being run by another management upto 2005. The present management took over the management of the appellant establishment and started production in November 2008. The appellant produced Annexure A4 to prove that the departments like Kerala State Electricity Board had extended certain concessions to them to start production. Annexure A5 is a certificate issued by the District Industries Centre to the effect that the appellant started functioning from 14.11.2008. The appellant also argued that they did not deduct the employees share of contribution for the period from 11/2008 till 06/2010 and requested for waiver of employees' share for the said period. The appellant produced Annexure A2 to substantiate their case that they requested for waiver of employees' share for the period from 11/2008 to 06/2010 as the same was not

deducted from the salary of employees. Since the respondent did not accept the request for waiver, the appellant was forced to pay both the contribution for the appellant as well as that of their employees. Further the appellant also produced Annexure A6 to A13 statements of Profit & Loss account to substantiate their claim that they were running under severe financial loss during the relevant point of time. The learned Counsel for the respondent submitted that the appellant failed to remit even the employees' share of contribution deducted from the salary of employees in time.

8. On a perusal of the documents produced by the appellant and hearing the Counsels for the appellant as well as the respondent, there are certain issues which are very clear. It is not disputed that the appellant has taken over a loss making sick unit and after getting certain concession from State Government they started production from 11/2008. The appellant succeeded in proving that they paid both shares of contribution for the period from 11/2008 to 06/2010 since the respondent rejected the claim of waiver of employees' share. It is also clear that the appellant establishment was under severe financial strain during the relevant point of time. Hence the claim of the respondent that there was deliberate and intentional delay in remittance of contribution cannot be accepted. However from 07/2010 onwards the appellant failed to remit even the employees' share of contribution deducted

from the salary of the employees in time. As pointed out by the respondent, the appellant committed offence of breach of trust U/s 405/406 of Indian Penal Code and therefore cannot claim that there was no mensrea in delayed remittance of contribution. As already pointed out it is clear that the financial constraints compelled the appellant establishment to delay the remittance of contribution and it is rather difficult to attribute mensrea in delayed remittance of provident fund contribution.

9. Considering the facts, circumstances and pleadings 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 as per the impugned order.

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 Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer