



सत्यमेव जयते

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

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

(Wednesday the 20th day of January, 2021)

APPEAL No.630/2019
(Old No.552(7)2013)

Appellant : The Parent Teacher Association
Bhavan's School
Chevayur
Kozhikode – 673017

By Adv.Asokan M.

Respondents : The Assistant PF Commissioner
EPFO, Regional Office
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 29.12.2020 and this Tribunal-cum-Labour Court on 20.01.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KK/17781/ENF-3(2)/2013-14/2259 dt.05.06.2013 assessing damages U/s 14B of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/2007 to 06/2012. The total damages assessed is Rs.13,520/-.

2. The appellant is a society registered under the Societies Registration Act. The members of the appellant are the parents of the students of the school. Even though PTA is constituted as per the provisions of the Education Act and Rule, it is an independent society. A considerable number of members get out of the PTA when their children completed their education in the school. The respondent initiated action against the appellant society on account of the fact that the PTA had failed to remit the contribution of some of the employees engaged by them. When the 7A proceedings were initiated the appellant could not produce the authenticated records before the 7A authority because of the change in the constitution of the appellant society. The respondent authority U/s 7A in the absence of proper records issued the order assessing an amount of Rs.3,02,268/-. The amount was remitted by the appellant. However the then managing committee could locate the records and produced the same before the respondent authority and the authority reduced the assessment to Rs.1,97,955/-. Subsequently the respondent authority U/s 14B of the Act issued a notice alleging that there was delay in remittance of contribution and directing the appellant to show cause why damages U/s 14B shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and submitted that the delay in remittance was not intentional and there was an excess payment already made by the appellant

with the respondent. The delay in remittance was also due to the fact that there was frequent changes in the management committee of the appellant society. The respondent ought to have found that the earlier assessment U/s 7A of the Act for non enrolled employees for the period from 01/2007 to 06/2012 was on presumptive wages and not on actual wages. The respondent authority ought to have seen that the appellant association remitted the contribution immediately on receipt of the assessment U/s 7A of the Act.

3. The respondent filed counter denying the above allegations. The appellant is liable to remit contribution of its employees as per Para 30 of EPF Scheme. However the appellant failed to comply with the above provisions which led to an order U/s 7A of the Act. Since there was delay in remittance a notice dt.15.04.2013 was issued to the appellant to show cause why damages U/s 14B read with Para 32A of the Scheme shall not be levied for belated remittance of contribution. A detailed delay statement was also enclosed along with the notice. A representative of the appellant attended the hearing and filed a written submission regarding the delay in remittance of contribution. Damages is a penalty for default or failure in performance of duty imposed under the Act. In **Bharath Plywood and Timber Products (P) Ltd Vs PFC**, 1977 (50) FJR 74 (Ker HC) the Hon'ble High Court of Kerala held that there may be many reasons to make belated payments of contribution but that is not a

ground for granting exemption for paying penalty or damages. As per Para 38 of EPF Scheme the appellant is liable to pay monthly contribution within 15 days of close of every month. In the case of any delay the appellant is liable to pay damages and interest U/s 7Q. In **Associated Industries (P) Ltd Vs RPFC**, 1963 (II) LLJ 652 the Hon'ble High Court of Kerala held that employers are under legal obligation to deposit their share to the fund, within the time prescribed, the moment the Act and Schemes become applicable to them and no notice or assessment is required for remitting the contribution.

4. The case of the respondent is that the appellant failed to enroll few of its employees to the provident fund membership. This was noticed by the Enforcement Officer during his inspection and accordingly action was initiated to assess the dues. The appellant failed to produce the records before the 7A authority and an order was issued assessing the dues on the basis of the provisional wages submitted by the Enforcement Officer. The appellant could later locate the wage register for the relevant period before the 7A authority and accordingly the respondent assessed the dues on the basis of the records produced by the appellant. The quantum of dues was substantially reduced. However the appellant remitted the contribution as per the first order issued by the 7A authority and therefore there was an excess of Rs.1,04,313/- lying with the respondent. The respondent thereafter issued notice for assessing damages

U/s 14B. A representative of the appellant attended the hearing and requested that in the special circumstances of this case no damages shall be levied. He also requested to waive the interest U/s 7Q. The respondent assessed the damages as per Para 32A of EPF Scheme and adjusted the excess amount lying with the respondent against the damages and interest assessed by them. As per the impugned order the respondent found that the appellant is liable to pay a further amount of Rs.13,520/- towards damages U/s 14B of the Act. According to the learned Counsel for the respondent, having violated the provisions of the Act and Schemes thereunder by not enrolling all the eligible employees the appellant cannot claim that there was no intentional delay in remittance of provident fund contribution. However it is seen that apart from the non-enrollment aspect, the appellant has also explained the reason why there was delay in remittance of contribution .

5. It is seen that the appellant is liable to remit an amount of Rs.78,961/- towards damages and Rs.38,872/- towards interest U/s 7Q. No appeal can be filed against an order issued U/s 7Q of the Act as no appeal is provided U/s 7(I) from an order issued U/s 7Q of the Act. The respondent further adjusted the balance of excess amount lying with them against the damages and found that a further amount of Rs.13,520/- is still outstanding against damages which is reflected in the impugned order.

6. In the facts and circumstances of this case, the adjustment of Rs.1,04,313/- against interest U/s 7Q and damages U/s 14B will meet the interest of justice and there is no justification for demanding the additional amount of Rs.13,520/- from the appellant.

Hence the appeal is partially allowed, the adjustment of Rs.1,04,313/- against Sec 7Q and 14B are upheld and the demand for further amount of Rs.13,520/- against damages is disallowed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer