



सत्यमेव जयते

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

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

(Tuesday the 17th day of March, 2020)

**APPEAL No.74/2019
(Old No.498(7)2014)**

Appellant : M/s.Dhakshin Bharath Security & Detectives
Valakottu Sankalp Tower
1st Floor, K.P.Road
Moonamkutty, Pullikanakku P.O.
Kayamkulam - 690537

By Adv.R.Sankarankutty Nair

Respondent : The Assistant PFCommissioner
EPFO, Sub Regional Office
Kochi - 682017

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 05.02.2020 and this Tribunal-cum-Labour Court on 17.03.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/24759/DAMAGES CELL/2014/17655 dt.05.03.2014 assessing damages U/s 14B of EPF & MP Act, 1952 for belated remittance of contribution for the period from 03/2010 to 09/2013. The total damages assessed is Rs.96,063/-. The

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

2. The appellant is a security agency supplying manpower to various establishments. The appellant is covered under the provisions of the Act. The appellant establishment has been regular in deposit of provident fund dues. There was no delay or default in the deposit of provident fund dues on the part of the appellant. As per the 'Manual For Inspectors', inspection is not required to be conducted in a regularly complying establishment and the appellant establishment was inspected by the Enforcement Officers from the respondent organization very rarely. The appellant received a notice from the respondent alleging delay in remittance of contribution from 03/2010 to 09/2013. The respondent has taken the date of encashment of the cheque as the date of payment, whereas, as per law, date of tender of cheques should be taken as the date of payment. The Hon'ble High Court of Delhi in **Systems & Stamping Vs EPF Appellate Tribunal** held that the rate of interest prescribed U/s 7Q of the Act is already built into Para 32A, in the quantum of damages.

3. The appellant referred to the following decisions to drive home his point that an authority under Sec 14B has got the discretion to reduce damages in appropriate cases.

1. **South Indian Flour Mills Pvt Ltd Vs RPFC, 1978 LIC 1187**
2. **Karnataka Agro Industries Corporation Ltd Vs RPFC, 1979 LIC 72**
3. **Murarka Paint & Varnish Works Ltd Vs Union of India, 1976 LIC 1453**
4. **Viswabharathi Welfare Printing Press Vs RPFC, 1979 LIC 269**
5. **Mysore Bangle Work Vs State of Mysore, 40 FLR 247(Mysore DB)**

4. The appellant also relied on a circular issued by Regional Provident Fund Commissioner, Delhi dt.28.11.1990 in which a limitation for levying damages U/s 14B was prescribed. According to the appellant, the damages shall be levied within a period of 3 years.

5. The respondent filed counter denying the above allegations. The appellant is a security agency covered under the provisions of EPF & MP Act. The appellant establishment defaulted in payment of provident fund dues for the period from 03/2010 to 09/2013. Belated remittance of statutory dues under the Act will attract penal damages U/s 14B of the Act at the rates prescribed under Para 32A of EPF Scheme. By virtue of the above provisions, the respondent issued a notice U/s 14B dt.01.01.2014 to the appellant to show cause with documentary evidence as to why penal damages U/s 14B of the Act shall not be levied for belated remittance of contribution for the period from 03/2010 to 09/2013. Along with the notice, a delay statement was also enclosed. An opportunity was also given to the appellant to appear in person or through a representative on 29.01.2014. He was given access to

all the pertinent records and was given an opportunity to reconcile the omissions, if any, with regard to the delay statement sent across to the appellant. An authorized representative of the appellant attended the hearing and submitted a detailed statement pointing out certain discrepancies in the delay statement sent along with the notice. A copy of the statement filed by the appellant is produced and marked as Exbt.R1. The above discrepancies were verified and necessary corrections were incorporated in the demand. The authorized representative who appeared on the next date of hearing i.e. on 12.02.2014 agreed with the quantum of assessment and sought time to remit the damages and 7Q interest. Accordingly, the impugned order came to be issued. The respondent also pointed out that no appeal can be filed from a demand of interest issued U/s 7Q of the Act.

6. The basic challenges in the appeal are, one, that there is a Circular dt.29.05.1990 issued by the Regional Provident Fund Commissioner, New Delhi that the interest component U/s 7Q is also included in the quantum of damages under Para 32A of the EPF Scheme. Another ground on which this appeal is filed is that, there is a Circular which provides for a period of limitation of 3 years before which the damages are to be assessed. The 3rd ground raised by the learned Counsel for the appellant is that an authority U/s 14B Act has adequate discretion to reduce the quantum of damages, in

appropriate cases. The learned Counsel for the respondent argued that the Circular of May 1990 issued by Regional Provident Fund Commissioner, New Delhi has no relevance after the amendment of the Act and Scheme provisions. With regard to the question of limitation, the learned Counsel for the respondent argued that the legal position was clarified by the Hon'ble Supreme Court in **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242. The Hon'ble Supreme Court in the above referred case held that “ There is no period of limitation prescribed by the Legislature for initiating action for recovery of damages U/s 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings U/s 14B would be taken; mere delay in initiating action U/s 14B cannot amount to prejudice in as much as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest”. Hence the claim of limitation in assessing damages U/s 14B cannot be accepted. The learned Counsel for the respondent also argued that the claim for damages U/s 14B and interest U/s 7Q was admitted during the proceedings before the 14B authority and the appellant cannot be allowed to take new pleas in this appeal which were not taken in the 14B proceedings. The learned Counsel

for the respondent also argued that in **Chairman, SEBI Vs Sriram Mutual Fund**, (2006) 5 SCC 361 the Hon'ble Supreme Court held that mensrea is not a relevant consideration for levying penalty.

7. No appeal is provided from an order issued U/s 7Q of the Act demanding interest. The Hon'ble Supreme Court in **Arcot Textile Mills Ltd Vs RPFC**, 2013 (16) SCC 1 held that no appeal is maintainable against a 7Q order. Hence the appeal against 7Q order is not maintainable.

8. Considering the facts and circumstances of this case, I am inclined to hold that there is no merit in the contentions raised in the appeal against the order issued U/s 14B of the Act.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer