



सत्यमेव जयते

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

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

(Thursday the 1st day of October, 2020)

**APPEAL No.85/2019
(Old No.66(7)2014)**

Appellant : M/s.Institute of Integrated
Management & Safety
Valakottu Buildings
K.P.Road, Pullikkanakku P.O.
Kayamkulam
Alappuzha - 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 01.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/21222/DAMAGES CELL/EX-PARTE/2013/10001 dt.26.09.2013 assessing damages U/s 14B of EPF & MP Act, 1952 for belated remittance of contribution for the period from 03/2008 to 02/2011. The total damages assessed is Rs.78,576/-. The

interest demanded U/s 7Q of the Act amounting to Rs.80,278/- for the same period is also being challenged in this appeal.

2. The appellant is a proprietary concern supplying manpower to Government offices, public undertaking and public enterprises all over the country. The source of income for the appellant establishment is the payment received from these offices and undertakings. There used to be financial difficulties because of the delay in receipt of payments from those Govt establishments. While so, the appellant received a notice from the respondent alleging that there was delay in remittance of contribution for the period from 03/2008 to 02/2011 and therefore to show cause why damages shall not be assessed for belated remittance of contribution. The delay in payment of provident fund contribution was never intentional and it was because of the delay in receipt of payments from various Govt departments. No interest is chargeable as interest is inbuilt in the damages. Sec 7Q of the Act is only a prescribing section and not a charging section. It only lays down the rate percentage of interest to be charged as a component of damages. The other component being penalty. The appellant was not given adequate opportunity to check the correctness of the dates of remittance and explain the delay. The Circular dt.28.11.1990 issued by the Regional Provident Fund Commissioner, Delhi prescribes the time limit for finalizing the 14B proceedings. The procedure for levy of damages since

its inception is based on departmental circulars and instructions issued from time to time. Hence the Circular dt.28.11.1990 will have statutory implication prescribing a time limit for assessing damages.

3. The appellant has cited the following decisions to argue that the purpose of Sec 14B is to recover compensation and not to impose penalty.

1. **South Indian Flour Mills Pvt Ltd Vs RPFC**, 1978 LLN 158(Mad HC)
2. **Karnataka Agro-Industries Corporation Ltd Vs RPFC** 1979 LIC 72
3. **Bharat Plywood & Timber Products Pvt Ltd Vs RPFC**, 1977 1 LLN 464
4. **Viswabharathi Welfare Printing Press Vs RPFC**, 1979 LIC 269(AP HC)

4. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. There is a delay in 104 days in filing the appeal and hence the appeal is time barred. No appeal is maintainable against an order issued U/ s 7Q of the Act as there is no provision for filing appeal U/s 7(I) of the Act. Admittedly there was delay in remittance of contribution which attracts damages U/s 14B read with Para 32A of EPF Scheme. A notice dt.25.07.2013 was issued to the appellant to show cause why damages as stipulated U/s 14B of the Act shall not be levied from him. The appellant was also given opportunities to present their case before the respondent on 04.09.2013 and 23.09.2013. All these summons were acknowledged by the appellant. However none appeared in the 14B proceedings. However the appellant vide letter

no.408/KB/KR-21222/C1/01 dt.20.09.2013 informed the respondent that they don't have anything to comment on the notice issued proposing assessment of damages. This clearly shows that the appellant was not interested in availing the opportunity offered to him to explain the delay in remittance of provident fund contribution. The respondent organization is under obligation to pay interest to the provident fund members at the rates declared by the Govt from time to time, irrespective of the fact whether the employer has remitted the contribution U/s 6 of the Act in time or not. It is also relevant to point out that the appellant was paying wages to its employees on time and deducting the employees' share of contribution from the salary of the employees. Even the contribution deducted from the salary of the employees is not remitted in time by the appellant. In **Ernakulam District Co-operative Bank Vs RPFC**, 2000 (1) LLJ 1662 the Hon'ble High Court of Kerala held that the establishments will have their own reasons for delaying contribution however that is not a sufficient ground for exempting the establishments from paying damages under the Act. There is no limitation prescribed under the provisions of the Act for levying damages and no administrative instruction can override the provisions of the Statute. The assessment of damages is done as per the provisions of Sec 14B of the Act read with Para 32A of EPF Scheme and is not based on any administrative instruction. Any circular or instructions issued

in 1990 will be no more valid after the amendment of the Act on 01.09.1991. The decision of the Hon'ble High Court Delhi in **Systems and Stamping Vs EPF Appellate Tribunal**, 2008 LLR 485 is of no avail to the appellant as the Hon'ble High Court has not considered the amendment of the Scheme provisions in 1991.

5. The learned Counsel for the appellant challenged the impugned orders on two grounds. According to him, sufficient opportunity was not given to the appellant to explain the delay before the impugned orders were issued, there by violating the principles of natural justice. The second ground pleaded by the learned Counsel for the appellant is that of financial difficulties.

6. The learned Counsel for the respondent pointed out that the appeal against Sec 7Q order is not maintainable as there is no provision in Sec 7(I) to challenge an order issued U/s 7Q of the Act. The Hon'ble Supreme Court in **Arcot Textile Mills Ltd Vs RPFC**, 2013(16) SCC 1 held that no appeal is maintainable from an order issued U/s 7Q as the same is not provided U/s 7(I) of the Act. This decision is also being followed by the Hon'ble High Court of Kerala in various decisions. Hence the appeal against Sec 7Q order is not maintainable.

7. According to the learned Counsel for the respondent, the appellant was in receipt of the notice dt.25.07.2013 along with a copy of the

delay statement with a direction to show cause why damages as proposed shall not be assessed. Further notice was also issued to the appellant to appear on 04.09.2013 and 23.09.2013. All these notices were acknowledged by the appellant, however none appeared in the enquiry to explain the delay in remittance of contribution. Further, vide letter dt.20.09.2013, the Deputy General Manager of the appellant informed the respondent that they have no comments to offer regarding belated remittance of contribution. Having taken such a view, the appellant cannot at this point of time turn around and say that he was not provided adequate opportunity to explain the delay in remittance of contribution. The other ground pleaded by the learned Counsel for the appellant is that of financial difficulties. As already explained, the appellant did not produce any document before the 14B authority to establish their financial difficulties. No documentary proof is produced in this appeal also to prove financial difficulty of the appellant establishment during the relevant point of time. However the learned Counsel for the appellant pointed out that the unit remains closed as of today, though no proof is produced for the same. The learned Counsel for the respondent further pointed out that the wages of the employees were paid in time and therefore the employees' share of contribution is deducted from the salary of the employees. The appellant failed to remit even the employees' share of contribution deducted from the salary of the

employees in time thereby committing an offence of breach of trust U/s 405/406 IPC. The appellant therefore cannot claim that there is no intentional delay or mensrea in belated remittance of contribution.

7. Considering the above facts and circumstances of this case, I am not inclined to interfere with the impugned order U/s 14B of the Act.

Hence the appeal against Sec 7Q order is dismissed as not maintainable. The appeal against Sec 14B order is also dismissed since the same is devoid of any merit.

Sd/-

(V. Vijaya Kumar)
Presiding Officer