



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 2<sup>nd</sup> day of August, 2021)

**APPEAL No. 536/2019**  
**Old.No. 640 (7) 2010**

Appellant

M/s. S N Cashew Industries  
[Khadheeja Cashew Industries]  
Kallumthazham  
Killikolloor, Kollam 691 004

By : Adv.Anil Narayanan

Respondent

The AssistantPF Commissioner  
EPFO, Regional Office,  
Mannaniya Complex  
Andamukkam, Kollam 691 001

By : Adv.PirappancodeV.S.Sudheer &  
By : Adv. Megha.A

This case coming up for final hearing on 20.04.2021 and this  
Tribunal-cum-Labour Court on 02.08.2021 passed the following:

**ORDER**

Present appeal is filed from order No KR/16243/RO/TVM/PD/  
Ex/NS/2002/4055/9055 dt.05.08.2002 assessing damages U/s  
14B of EPF and MP Act, 1952 (hereinafter referred to as 'the Act') for

belated remittance of contribution for the period 07/1996 to 02/2001. The total damages assessed Rs. 90766/-.

2. The appellant is the proprietor of the appellant establishment also known by name of M/s Kadija Cashew Industries, is engaged in the business of processing raw cashew. The appellant establishment remitted the contribution for all the eligible employees' without any delay. As a seasonal establishment the appellant engages casual employees during the peak season. These employees are paid wages depending on the number of days they worked. The respondent issued an assessment order U/s 7A of the Act against these employees engaged on contract basis. Though the assessment made by respondent was not fair, the appellant remitted the same without any objection. Thereafter the respondent initiated action for assessment of damages alleging delay in remittance of contribution. The appellant remitted the contribution for employees engaged on casual basis as per the direction of the respondent, though they are not legally obliged to do the same. Hence there was no delay as alleged by the respondent. There was no deliberate act or wilful defiance of law from the side of the appellant and there was no contumacious and dishonest conduct from the side of appellant. The appellant was not a chronic

defaulter. The respondent issued the impugned order in a mechanical way without proper application of mind. The respondent ought to have noticed that the delay in payment of contribution was due to financial crisis of the appellant. As per Section 14B, as it stands now, is purely punitive in nature and therefore the respondent ought to have levied damages strictly in accordance with the principles for imposing penalty, which is a quasi criminal proceeding. The Hon'ble Supreme Court of India in **M/s Hindustan Steel Ltd V The State of Orissa**, AIR 1970 SC 253 held that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

3. The respondent filed counter denying the above allegations. The respondent organisation being the custodian of EPF fund is duty bound to maintain, retain and discharge the social welfare benefits to the present as well as the future eligible EPF members. The appellant establishment M/s S N Cashew Industries (previously functioned in the name of M/s Khadija Cashew Industries) was brought under the coverage of the Act w.e.f. 20.07.1996. The appellant establishment delayed remittance of PF contribution for

the period from 07/1996 to 2/2001. Consequently, notice dt. 12.7.2002 was issued to the appellant to show cause why damages as stipulated U/s 14B of the Act read with Para 32A of EPF Scheme shall not be levied for belated remittance of contribution. A detailed delay statement furnishing the due date of delay, the actual date of contribution and the delay in remittance was also sent along with the notice. The appellant was also given an opportunity for personal hearing on 05.08.2002. The receipt of the notice was acknowledged by the appellant. The copy of the acknowledgement card is produced and marked as Exbt. R1. There was no representation for the appellant on 05.08.2002. There was no representation or request for adjournment. Hence the respondent felt that the appellant had no objection to the delay statement and therefore the respondent issued the impugned order. Even though the contributions are made belatedly on a later date, the statutory benefits are afforded to the subscriber-employees promptly as if the contributions are made on the due month basis. Hence the appellant establishment is liable to pay damages for belated remittance of contribution. The appellant was given an opportunity to explain the difficulty and also objection, if any to the delay statement. Since the appellant failed to avail the opportunity, he cannot argue at the appellate stage that the delay

was due to financial constrains of the appellant establishment. In ***Hindustan Times Ltd V Union of India***, 1998 (2) SCC 242 Hon'ble Supreme Court of India held that the financial difficulty is not a relevant explanation to avoid the liability for payment of Provident Fund dues in time. In ***Elsons Cotton Mills V RPFC, 2001 (1) SCT 1104 (P&H)(DB)*** the Division Bench of Hon'ble High Court of Punjab and Haryana held that the plea of financial crisis as a ground for delayed remittance of contribution, is not acceptable. The Hon'ble Supreme Court of India in ***Organo Chemical-Industries V Union of India, AIR 1979 SC 1803*** held that the very purpose of introduction of Sec 14B is to penalise the employer who delayed payment of contribution as the belated remittance of contribution will drain the Fund of minimum liquidity to give social security to the poor workers who are members of the Fund.

4. The only issue raised by the appellant in this appeal for belated remittance of contribution is financial difficulties. It is seen that the respondent issued notice to the appellant along with a delay statement. It is also seen that the appellant was given an opportunity for personal hearing. The notice was acknowledged by the appellant as per Exbt. R1. However the appellant failed to

attend the hearing U/s 14B before the respondent authority. Since there was no dispute, the respondent issued the order in terms of the delay statement as if the appellant admitted the liability as per the statement. Hence the claim of the appellant that the impugned order is not speaking and is issued in a mechanical way has no basis. In this appeal, the appellant has raised a contention that the delay in remittance was due to the financial difficulty of the appellant establishment during the relevant point of time. However the appellant failed to produce any documents to substantiate their claim. In **M/s. Kee Pharma Ltd. Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B if the appellant pleads and produces documents to substantiate the same. In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a

conclusion that it has to be taken as mitigating factor for lessening the liability. Another contention raised by the appellant is that, the appellant establishment was regular in compliance. However, the respondent authority decided that the appellant is liable to remit contribution for casual employees, engaged by them. The appellant remitted the dues immediately on assessment by the respondent authority. However, the appellant failed to furnish any details such as the date of the orders issued under section 7A of the Act assessing the dues in respect of the casual employees, the period for which such assessment is made and the date of remittance of the dues. In the absence of any such details and evidence, it is not possible to accept the claim of the appellant

5. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer