



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Tuesday the 9<sup>th</sup> day of November 2021)

**APPEAL No.305/2018**

Appellant : M/s. Karikkinethu Silk Galeria  
Eminance Mall,  
Building No XV/523  
Adoor  
Pathanamthitta – 691 523

By Adv.C.SAjith Prakash

Respondent : The Assistant PFC Commissioner  
EPFO, Sub Regional Office  
Pattom, Trivandrum – 695 004

By Adv.Ajoy P B

This case coming up for final hearing on 04.08.2021 and this Tribunal-cum-Labour Court on 09.11.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/TVM/1508314/PD/2018 - 2019/3466 dated 01.08.2018 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the

period from 04/2015 - 02/2018. Total damages assessed is Rs.3,14,954/- (Rupees three lakh fourteen thousand nine hundred and fifty four only).

2. Appellant is a partnership firm engaged in the business of sale of garments. The appellant started its activity in April 2015. The appellant applied for coverage under the provisions of the Act in April 2016, however code number was allotted only on August 2016. Appellant establishment did not make any deduction of contribution from the salary of the employees. The account was finally opened from December 2016. The appellant applied for waiver of employee's share of contribution. An inspection was conducted by Enforcement Officer on 16.12.2016, followed by an enquiry under Sec 7A. After elaborate consideration, the respondent authority waived the employees' share for the period from 04/2015 - 07/2016 and an amount of 5,31,722/- is assessed being employer's share for the said period. The appellant thereafter received a summons on 07.06.2018 directing to show cause why damages shall not be assessed for belated remittance of contribution. The appellant received the summons only on

07.06.2018. The respondent provided another opportunity for hearing on 04.07.2018. The appellant appeared before the respondent and filed a written statement requesting to waive damages. It was pointed out in the written statement that due to technical reason, the appellant could access the payment portal of EPFO only on 27.02.2017. It is evident from various E-mail communication between the appellant and the respondent organisations. Ignoring the contentions, the respondent issued the impugned order. The respondent failed to distinguish the purpose and object of imposing damages and has acted in a mechanical manner. The Hon'ble Supreme Court in ***Hindustan Steels Limited Vs State of Orissa AIR 1970 SC 253*** has enumerated the procedure while imposing penalty on an establishment. An order imposing penalty for failure to carry out a statutory obligation is a result of quasi criminal proceeding. Sec 14B as it stands now is purely a penal provision and the appellant ought to have examined whether the appellant acted deliberately in defiance of law or was guilty of conduct, contumacious, dishonest or disregard of its obligations. The respondent authority calculated the damages for the period from 04/2015–02/2018. The appellant

establishment started regular remittance much before 2018. The respondent authority failed to exercise its discretion conferred under Sec 14B of the Act. The appellant filed a written statement explaining the genuine reason for the delay. The case of the appellant was that the user ID and password is not accessible so as to make remittance. The appellant sent reminders on 22.01.2017, 30.01.2017 and 21.02.2017 and the problem was rectified by the respondent only on 27.02.2017. Therefore the finding of the respondent authority that the OLRE web/portal was not working is not the answer to the contention. The contention that the mails were send 22 months after the establishment is covered is not relevant. The respondent authority also failed to consider the infancy period of the appellant establishment.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act, the appellant delayed remittance of Provident Fund contribution for the period from 04/2015 – 02/2018. The delay in remittance will attract damages under Sec 14B, read with Para 32A of EPF scheme. A summons

dated 21.05.2018 was issued to the appellant to show cause why damages as stipulated under Sec 14B shall not be levied. The appellant was also given an opportunity for personnel hearing on 07.06.2018. None appeared on 07.06.2018 and the enquiry was adjourned to 04.07.2018. On 04.07.2018 a representative of the appellant attended the hearing and submitted a written statement dated 03.07.2018. The appellant explained the financial difficulty of the appellant establishment during the relevant point of time. It was also pleaded that due to technical reasons they were unable to remit the statutory dues as their account could be activated only in February 2017. The respondent authority examined all the issues raised by the appellant and found that the appellant establishment was coverable w.e.f. 04/2015 and the appellant was required to register its establishment through Online Registration of Establishment Portal (OLRE). No evidence was produced to substantiate technical reason preventing the establishment for remitting the contribution for two years. Admittedly the appellant establishment started in April 2015 with more than 20 employees and therefore it is coverable under the provisions of the Act w.e.f. April 2015

itself. The appellant is required to register online through OLRE portal. However they applied for coverage only in April 2016, after a delay of one year. The appellant failed to produce any documents to substantiate the claim that there was technical problems. Though the appellant pleaded financial difficulty, no documentary evidence is produced to substantiate the same. The claim of the appellant that the respondent has not sustained any loss or damage due to the delayed remittance of contribution is wrong. The financial difficulty of the appellant establishment is not a reason for reducing or waving damages under Sec 14B of the Act. The Hon'ble Supreme Court of India in ***Organo Chemicals Industries Vs Union of India*** 1979 AIR (SC) 1803 held that even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation. The appellant was very well aware of the consequence of delayed remittance of contribution. They admitted the delay during the course of hearing. The damages levied by the respondent authority for the period from 04/2015 – 07/2016 was only for employer's

share of contribution. The employees' share of contribution for the said period was waived.

4. Admittedly the appellant establishment started functioning from April 2015. The appellant was employing more than 20 employees in April 2015. Therefore the appellant establishment is coverable under the provisions of the Act w.e.f. April 2015 itself. It is a statutory obligation on the part of the appellant to ensure that the appellant establishment started compliance extending benefit of social justice to its employees from the due date. The appellant failed to do so. In April 2016, ie after one year of its statutory liability, the appellant applied for a provident fund code number. By that time the respondent organisation has introduced ORLE Portal for online registration of establishment. According to the learned Counsel for the respondent, the appellant ought to have taken the code number from OLRE portal by furnishing the required information. Hence the appellant cannot plead that there was delay in allotment of code number to the appellant establishment. The second point pleaded by the learned

Counsel for the appellant is that there were technical issues which was pointed out to the respondent on 22.01.2017 through e-mail. On a perusal of the e-mail dated 22.01.2017, it is stated that the respondent office has confirmed that a onetime password from OLRE portal will be automatically send to the mobile and e-mail furnished. It is further stated that the password is not yet received or by mistake it was deleted from the system and mobile. According to the appellant, they got the user ID and password only on 27.02.2017. From the pleadings of the appellant itself, it is clear that the 90% of the delay occurred on the part of the appellant only. When the appellant establishment was coverable from 01.04.2015, the appellant registered on OLRE portal only in April 2016, a delay of one year. After the registration, appellant missed the username and password sent from OLRE portal which is automatic. Then the appellant entered into correspondence with the respondent office to reset the user ID and password which is done within a period of one month. Even thereafter, the appellant delayed remittance of contribution. As seen from the summons issued to the appellant, the appellant establishment started remittance only from 03.11.2017.



Hence the claim of the learned Counsel for the appellant that the technical problems and delay in allotment of code number by the respondent authority is responsible for delay in remittance cannot be accepted. The learned Counsel for the appellant relied on the decision of ***Assistant Provident Fund Commissioner Vs Employees Provident Fund Appellant Tribunal, Laws*** (P&H) 2015 9292 to argue that unintentional delay in deposit of EPF contribution will justify reduction or waiver of damages. It is an accepted legal position that mensrea is a relevant consideration while deciding the quantum of damages. However it is for the appellant to establish beyond any reasonable doubt that the delay in remittance of contribution was due to circumstances beyond the control of the appellant. In this case, as rightly pointed out by the learned Counsel for the respondent, 90% of the delay is attributable to the appellant establishment itself. When appellant establishment is coverable w.e.f. 01.04.2015, the appellant applied for coverage in April 2016 only. There was a delay of one year in applying for code number. As pointed out by the learned Counsel for the appellant, the appellant ought to have taken the code number online through

web portal. Even after getting the code number the appellant misplaced the user ID and password. The appellant approached the respondent authority only in April 2017 to get the technical problem resolved. Therefore there was a further delay of five months. The problem was finally sorted out on 27.02.2017 and still the appellant started compliance only from 03.11.2017. There is a further delay of 9 months in starting the compliance. Hence it is not fair on the part of the appellant to argue that the delay of 22 months in starting compliance was due to the delay on the part of the respondent in allotting code number and also resolving the technical issues. It is pleaded in the appeal memo that the appellant started deducting the employees' share of contribution w.e.f. 08/2016. Assuming it to be correct, the appellant was withholding the employees' share of contribution, deducted from the salary of the employees for more than 15 months. Not remitting the employee share of contribution deducted from the salary of the employees' is an offence of breach of trust. Having committed the offence of breach of trust under Sec 405/406 of Indian Penal Code, the appellant cannot plead that there was no mensrea in belated remittance of contribution.

5. The learned Counsel for the appellant also pleaded that the delay in remittance was due to the financial difficulty of the appellant establishment during the relevant point of time. The learned Counsel for the respondent relying on the decision of Hon'ble High Court of Kerala in ***Sree Kamakshy Agency Pvt. Ltd. Vs EPF Appellate Tribunal*** 2013-1 KHC 457 and ***M/s Steel Industries Kerala Ltd. Vs APFC***, WPC No.29645/2014 argued that the appellant failed to produce any documents to substantiate the financial difficulty and therefore the claim of financial difficulty cannot be considered for reducing or weaving penal damages.

6. It may be true that the appellant establishment faced some technical issues in the initial stages of online registration and also subsequent payments in the EPFO remittance portal. However the same cannot justify a delay of 22 months in remitting the contribution.

7. Considering all the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if appellant is directed to remit 80% of the damages as per Sec 14B of the Act.

8. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 80% of the damages as per Sec 14B of the Act.

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