



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Wednesday the 17th day of November 2021)

APPEAL No. 398/2019

(Old No. ATA 1216 (7) 2015)

Appellant : M/s. Joonktolee Tea & Industries
Limited
Pullikanam Estate, Wagamon
Idukki – 685 503.

By M/s. Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Thirunakkara
Kottayam – 686 001.

Adv. Joy Thattil Ittoop

This case coming up for final hearing on 26.08.2021 and this Tribunal-cum-Labour Court on 17.11.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/KTM/346/ APFC / Penal Damage / 2015 / 11252 dated 16.09.2015 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 08.12.2005 – 17.12.2014 (for the period from 03/2003 – 01/2005, 07/2010 – 08/2012). Total damages assessed is Rs. 26,02,373/- (Rupees twenty six lakh two thousand three hundred and seventy three only).

2. The appellant is a company registered under companies Act, engaged in rubber, tea and coffee plantation. The appellant establishment is a tea estate covered under the provisions of the Act. Since 1998, tea industry is passing through severe financial crisis. 38 estates in the locality were closed. On account of unprecedented financial crisis prevailing in the plantations, the petitioner was incurring loss from 1999-2000. The accumulated loss of the company during the relevant period was more than 2959 lakhs. In spite of heavy losses, the petitioner was paying wages to the employees regularly. The delay in remittance of provident fund contribution occurred on account of various factors beyond the control of the appellant. The copies of the balance sheet and Profit and Loss A/c for the years 2002-2003, 2003-2004, 2004-2005 and 2010-11 are produced and marked as

Annexure A1 to A4 respectively. The respondent issued notice to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A representative of the appellant entered appearance and explained the financial difficulty. Ignoring the contentions of the appellant, the respondent issued the impugned order. The respondent failed to exercise his discretion available to him under Sec 14B of the Act. In ***RPFC Vs S.D College, Hoshiapur*** 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive the penalty altogether he has the discretion to reduce the percentage of damages. The Hon'ble High Court of Kerala in ***RPFC Vs Harrisons Malayalam Ltd***, 2013 3 KLT 790 held that financial constraints can be a mitigating circumstance while levying damages under Sec 14B of the Act.

3. Respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant is liable to remit provident fund contribution within 15 days of close of each month. The appellant delayed remittance of contribution for

the period from 03/2003 – 08/2012. The respondent therefore initiated action for levying damages which culminated in the impugned order. Paragraph 30 of EPF Scheme, 1952 provides that the employer shall in the first instance pay both the contribution payable by himself and also on behalf of the member employed by him directly or by or through a contractor. Para 38 of EPF Scheme provides that the employer shall within 15 days of close of every month pay the contribution to the respondent authority. Paragraph 32A of EPF Scheme provides for levy of damages for belated remittance of contribution. Unless the appellant establishment makes timely remittance as required under the Act and Scheme, further investments could not be made which will affect the interest payable to the provident fund members. Any delay committed by an employer in remittance of dues results in loss of interest to the fund which ultimately affects the corpus of the fund. The Hon'ble Supreme Court of India in ***M/s. Hindustan Times Ltd. Vs RPFC***, AIR 1998 SC 688 held that financial problem cannot be a justifiable ground for the employer to escape liability under Sec 14B of the Act. The Hon'ble High Court of Kerala in ***Calicut Modern Spinning***

and Weaving Mills Vs RPF, 1982 LAB IC 1422 held that Paragraph 38 of the Scheme oblige the employer to make payments within 15 days of close of every month and Para 30 cast a statutory obligation on the employer to pay both the contributions in the first instance. In **Organo Chemical Industries Vs Union of India** 1979 LAB IC 1261, the Hon'ble Supreme Court of India held that Sec 14B is meant to penalise a defaulting employer so that he will not commit the same default again.

4. There is no dispute regarding the fact that there is delay in remittance of contribution. According to the learned Counsel of the appellant, the delay in remittance was due to the financial issues of the appellant establishment. To substantiate the claim, appellant establishment has produced a two page extract of Profit & Loss Account for the year ended 31.03.2003, 31.03.2004, 31.03.2005 and 31.03.2011. No documents were produced before the respondent authority at the time of hearing the 14B matter. It is seen that the Profit & Loss Account produced by the appellant now in this appeal is that of M/s. Cochin Malabar Estates and Industries Ltd.,

which owns various estates and appellant is one of the estates. Hence it is not possible to evaluate the financial status of the appellant establishment from the documents produced by them. The learned Counsel for the respondent pointed out that the documents now produced by the appellant may not be accepted for deciding the liability since none of this document were considered by the respondent authority. The learned Counsel for the respondent also pointed out that the statements in the Profit & Loss account cannot be accepted as it is a totally incomplete document which will not disclose the actual financial position of the appellant establishment. In ***Aluminium Corporation Vs Their Workman***, 1964 (4) SCR 429 the Hon'ble Supreme Court held that the mere statements in balance sheet as regards the current assets and current liability cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses.

5. The learned Counsel for the appellant could not explain how the documents produced in this appeal will

disclose the financial status of the appellants establishment. It is pleaded in the appeal memo itself that the salaries of the employees were paid regularly in time. When the salaries of the employees are paid, the employee's share of contribution is deducted from the salary of the employees. Non-payment of employee's share of contribution deducted from the salary of the employee is an offence of breach of trust under Sec 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellants cannot claim that there was no intentional delay in remittance of provident fund contribution. The learned Counsel for the appellants pleaded that there was no mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in ***Horticulture Experiment station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering the decisions of the Hon'ble Supreme Court in ***Mcleod Russell India Ltd. Vs Regional Provident Fund Commissioner***, 2014(15) SCC 263 and ***Assistant Provident Fund Commissioner Vs Management***

of RSL Textiles India Pvt. Ltd., 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others Vs Dharmendra Textile Processors and Others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”*

In view of the above decision all the previous decisions of the Hon'ble Supreme Court as well as the Hon'ble High Courts on the issue of mensrea in Sec 14B proceedings has become irrelevant. However considering the fact that the plantation industry was suffering huge losses during the relevant point of time, the appellant deserves some accommodation as far as levy of damages under Sec 14B is concerned.

6. Considering 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.

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

Sd/-
(V. Vijaya Kumar)
Presiding Officer