



सत्यमेव जयते

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

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

(Thursday the, 23<sup>rd</sup> day of December 2021)

**APPEAL No.406/2018**

Appellant

M/s. Gregorios Cashew Industries,  
Chakkuvarackal P.O.  
Kottarakkara  
Kollam – 691 508

By Adv.Benny P Thomas

Respondent

1. The Regional PF Commissioner  
EPFO, Sub Regional Office,  
Ponnamma Chambers – 1,  
Opposite Archana – Aradhana Theatre,  
Kollam – 691 001.
2. Mr. Saji Kunjukunju, Proprietor,  
Bethel Bungalow,  
Vilakudi.P.O.  
Kollam – 691 508
3. M/s. Central Board of Trustees,  
Bhavishyanidhi Bhavan  
P.B.No. 1016  
Pattom, Thiruvananthapuram – 695 004.

By Adv. Pirappancode V.S.Sudheer  
(For respondent 1 & 3)

This case coming up for final hearing on 29.09.2021 and this Tribunal-cum-Labour Court on 23.12.2021 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KLM/3560/PD/2018-19/704 dated 08.11.2018 assessing damages under Section 14B of EPF Act and MP Act (hereinafter referred to as the 'Act') for belated remittance of contribution from 01/2008 to 04/2014. The total damages assessed is Rs. 25,38,871/- (Rupees twenty five lakh thirty eight thousand eight hundred and seventy one only).

2. M/s. Noel Cashew at present M/s. St. Gregorios Cashew Industries is an establishment covered under the provisions of the Act. The establishment delayed remittance of contribution for the period from 2008 – 2014. The appellant is a transferee of the establishment from 18.04.2017 and was directed to pay the interest and damages for delayed remittance of contribution for the period from 01/2008 – 04/2014. The appellant establishment is incurring losses because of the crisis prevailing in the cashew industries. The appellant took the establishment on lease during the year 2014 and thereafter purchased the same on 18.04.2017. The alleged delay in remittance of contribution occurred during the period from January 2008 to April 2014 when the appellant was nowhere in

picture. The transferor of the appellant establishment was running the factory and he himself paid the contribution and therefore the appellant cannot be saddled with the liability under Sec 14B of the Act. The appellant issued show cause notice dated 21.10.2014 alleging delay in remittance of contribution for the period from 01/2008 – 04/2014. The respondent also fixed a personnel hearing which was attended by the appellant. It was pointed out to the respondent that during the period of lease by the appellant, the contribution was paid regularly. It was also explained to the respondent authority that during 03/2011, 03/2012, 03/2013, the appellant was not responsible for the delay in contribution. It was also explained that the appellant purchased the factory only on 18.04.2017 under Sale Deed 709/2017 wherein the seller had undertaken complete responsibility of settling all previous liabilities including Provident Fund and ESI. A copy of the Sale Deed dated 18.04.2017 is produced and marked as AnnexureA1. The appellant also filed a detailed statement explaining the effect and consequences of transfer. A true copy of the statement is produced and marked as Annexure A2. Without considering any of the submissions, the respondent authority issued the

impugned order which is produced and marked as Annexure A3. The appellant was running the establishment on lease from 26.05.2014 and the appellant was regular in compliance. The appellant is not responsible for the delay in contribution for the period from 01/2008 - 04/2014. The respondent authority failed to exercise its discretion provided under Sec 14B of the Act and Para 32A of EPF Scheme. In **R.P.F.C Vs S.D college Hoshiarpur**, 1997 (2) LLJ 55, the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to waive percentage of damages. In **Indian Telephone Industries Vs Assistant Provident Fund Commissioner**, W.P.(C) No. 32515/2005, the Hon'ble High Court of Kerala held that the authority exercising powers under Sec 14B has the discretion to reduce the damages. The Division Bench of the Hon'ble High Court of Kerala in **Harrisons Malayalam Vs RPF**, 2013 (3) KLT 790 held that financial constraints are to be considered as a valid reason for the purpose of delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant failed to remit the

contribution in time for the period from 01/2008 – 04/2014. The delay in remittance will attract damages under Sec 14B of the Act. Hence a notice was issued to the appellant along with a delay statement specifying the amount of dues, due date of payment, actual date of payment and period of delay committed by the appellant. The appellant was also given an opportunity for personnel hearing. It was noticed by the respondent that there was some bulk remittances made by the appellant and therefore the statement is accordingly revised and notice was issued to the appellant on 16.08.2017.

4. The appellant establishment was operated by Sri. Saji Kunjukunju upto 04/2014 in the name of Noel Cashews and thereafter was leased to the appellant w.e.f. 26.05.2014 and the appellant establishment was run in the name of St. Gregorios Cashew Industries. In continuation of the lease period, the appellant purchased the establishment on 18.04.2017. Notice was also issued to M/s. Noel Cashews whose representative appeared and submitted copies of lease agreement and sale deed. He also pleaded that M/s. Noel Cashews may be exempted from paying damages under Sec 14B of the Act. The representative of the appellant pleaded that they purchased the

factory only on 18.04.2017 and therefore the damages prior to that date may be recovered from the previous employer. The appellant submitted a letter dated 28.02.2018 stating that they were neither the occupier nor employer of the establishment before 06/2014. From Annexure A1 sale deed, it is seen that the appellant establishment was sold to the appellant only w.e.f. 18.04.2017 and Sri. Saji Kunjukunju was the sole owner of the company for the period 01.04.1996 – 03.07.2014 and corresponding wage month 01/2008 – 04/2014, for the period for which notice under Sec 14B dated 27.10.2014 was issued. It is also stated at page 4 of the sale deed that all statutory dues including Provident Fund till date of agreement has already been remitted by him and that Sri. Saji Kunjukunju would be responsible for any future liabilities in this regard with respect to the employees and the same would be borne by him. Transfer is an agreement between the transferor and transferee. The transferee cannot claim immunity from the liability accrued under the provisions of the Act. Sec 17B of the Act makes the position very clear. The Hon'ble Supreme Court of India in ***Mcleod Russel India Ltd. Vs RPF***, 2014 AIR (SC) 2573, examined the legal position and clarified that the earlier decision

of the Special Bench of the Hon'ble High Court of Calcutta in ***Dalgoan Agro industries Ltd Vs Union of India***, 2006 (1) CALLT 32 (HC) on the issue is correct. In ***Dalgoan Agro Industries Ltd (supra)*** the Special Bench of Hon'ble High Court of West Bengal held that transferor and transferee managements remain jointly and severally liable under Sec 14B and 17B of the Act for all sums due including damages. In ***Elsons Cotton Mills Vs RPF***, 2001 (1) SCT 1104 (P&H)(DB), the Division Bench of Punjab and Haryana High Court and also in ***Steel Tubes of India Ltd Vs APFC***, 2012 3 LLJ 603, the Hon'ble High Court of Madhya Pradesh held that financial stringency cannot be a ground for reducing the damages under Sec 14B of the Act.

5. There is no dispute regarding the facts of the case. The appellant establishment was owned by Sri. Saji Kunjukunju for the period from 01.04.1996 to 03.07.2014 and the appellant establishment was given on lease to the appellant on 05/2014 and was later purchased by the appellant vide Annexure A-1 Sale Deed dated 18.04.2017. The respondent initiated action under Sec 14B of the Act for belated remittance of contribution from the period 01/2008 – 04/2014. The respondent authority summoned the appellant as well as Sri. Saji Kunjukunju who

was the original owner of the appellant establishment. The appellant establishment was taken on lease by the appellant on 26.05.2014 and on completion of the term of the lease period, the appellant purchased the establishment. The learned Counsel has pleaded that since the appellant was neither the occupier of the appellant establishment during the relevant period of time, the appellant cannot be held responsible for the damages for the said period as the contributions were paid by Sri. Saji Kunjukunju who was the original owner of the appellant establishment. The learned Counsel for the respondent pointed out that Sec 17B of the Act fixed the liability in case of transfer of an establishment.

*As per Sec 17B, 'Liability in case of transfer of establishment'*

*"Where an employer in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provisions of this Act or the*



*Scheme or the Pension Scheme or the Insurance Scheme as the case may be, in respect of the period upto the date of such transfer; Provided that the liability of the transferee shall be limited to the value of assets obtained by him by such transfer”.*

It is clear from the above provision that the appellantis also jointly and severally liable to pay the contribution and other sums upto the date of transfer and as a transferee, his liability will be limited to the value of assets obtained by him by such transfer. It is seen from Annexure A1 document that the value of assets obtained by the appellant is Rs.1,20,00,000/-. The learned Counsel for the respondent also relied on the decision of the Hon’ble Supreme Court in ***Mcleod Russel India Ltd. (Supra)***. The facts of the above case are exactly similar to the facts of the present case. The Hon’ble Supreme Court held that

*“Para 11: It is also been argued that damages as postulated in Sec 14B would not be transferable under Sec 17B. This argument has to be stated only to be rejected for the reason that Sec 17B specifically speaks of “the contributions and other sums due from the employer under*

*any provisions of this Act and schemes” (emphasis added).*

*The proviso to Sec 17B indeed clarifies that position in as much as it restricts and/or limits the liability of the transferee upto the date of the transfer to the value of the assets obtained by him through such transfer.”*

The Hon'ble Supreme Court elaborately consider the earlier decision of the special bench of Calcutta High Court in ***Dalgoan Agro Industries Ltd. Case (Supra)*** wherein it was held that the transferor and transferee managements remain jointly and severally liable under Sec 14B and 17B for all sums including damages. It was also held by the Hon'ble High Court of Calcutta that the covenants in transfer deals are irrelevant for determination and recovery of dues and damages. The Sec 17B of the Act along with the decisions of the Hon'ble Supreme Court and special bench of Calcutta High Court Division Bench will fortify the liability of appellant to remit the damages along with the previous employer.

6. The learned Counsel for the appellant also pleaded that financial difficulty of the appellant establishment delayed the remittance of contribution and there was no intentional delay or mensrea in belated remittance of contribution. He

relied on the decisions of ***Indian Telephone Industries (Supra)*** and also ***Harrisons Malayalam Case (Supra)***. It is pointed out that the decision in ***Indian Telephone Industries case*** is subsequently modified by the Division Bench directing the appellant to approach the Central Board of Trustees for any remission in damages. The decision of the Division Bench of Kerala High Court in ***Harrison Malayalam case*** is also modified by the Hon'ble Supreme Court in SLP (C) 21174/2015 holding that the question of law discussed in the said judgement is kept open to be decided in an appropriate case. 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 its earlier decisions 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”

The above judgement of the Hon’ble Supreme Court finally settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

7. As already discussed above, the respondent authority has summoned the earlier owner of the appellant establishment Sri. Saji Kunjukunju also in the proceeding. It is clear from the pleadings of the parties and the evidence available, that for the period from Jan 2008 – April 2014, Sri. Saji Kunjukunju was the owner of the appellant establishment and he remitted the contribution, though belatedly in respect of his employees. As per Sec 17B of the Act, both the appellant and the transferor are jointly and severally liable for the damages for belated

remittance of contribution for the period from Jan 2008 – April 2014. Hence the original owner Sri. Saji Kunjukunju cannot escape the liability of remitting the damages. Hence the impugned assessment of damages is upheld. However the impugned Order is modified holding that the appellant as well as Sri. Saji Kunjukunju, proprietor of M/s. Noel Cashews will be jointly and severally liable to remit the damages as per the impugned order.

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