



सत्यमेव जयते

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

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

(Friday the 5<sup>th</sup> day of November 2021)

**APPEAL No.492/2019**

Old No. ATA 348 (7) 2016

Appellant : M/s. Haileburia Tea Estates Limited  
24/432, Marar Road,  
Willingdon Island  
Cochin – 682 003

By Adv.Mathews K Uthuppachan

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

By Adv.Joy Thattillitloop

This case coming up for final hearing on 28.07.2021 and this Tribunal-cum-Labour Court on 05.11.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KTM/3090/PD14B/2014/18911dated 24.02.2016 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 12/2001 to 03/2012. Total damages assessed is Rs.3,55,201/- (Three Lakh fifty five thousand two hundred and one only).

2. Appellant is a company incorporated under the Companies Act which has several estates including the appellant estate. The estate is engaged in plantation of tea. The Plantation Industry in the State of Kerala on account of various factors has been facing serious crisis. The appellant could not remit the Provident Fund contribution promptly in view of the financial crisis from December 2002 – March 2012. However depending upon the availability of funds, the contributions were paid. The problems faced by the plantation industry was taken up by United Plantation Association of South India and took the matter before the Central Government. The Association sought exemption to Plantation Industry under the provisions of Sec 16(2) of the Act. The financial crisis of Plantation Industry was studied by an expert team deputed by the Ministry of Commerce and Industry. A copy of said report was also sent to the Government of Kerala. In the light of the recommendations of the Committee, the

State Government has issued an order dated 02.06.2004 and the Union and State Government announced certain measures of relief for the industry. Due to the financial crisis, the appellants' account was also classified as Non-Performing Asset, during this period. There were also lockouts in the estates of the appellant from January 2003. The appellant had to sell its registered office to handle the financial crisis. Considering the grave situation Kerala State Electricity Board waived the minimum charges for the appellant.

3. While so the appellant received a notice dated 21.07.2014 issued by the respondent to show cause why damages under Sec 14B should not be recovered for belated remittance of contribution from 12/2001 – 03/2012. The appellant replied to the notice. Without considering the request of the appellant, the respondent issued the impugned order. The demand for damages is time barred and suffers from delay and laches. The impugned order suffers from total non-application of mind. The respondent failed to exercise its discretion available under Sec 14B of the Act. It is a settled legal position that the damages being in the nature of penalty

need not be imposed if there is no contumacious conduct on the part of the defaulter.

4. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 12/2001 to 03/2012. According to the appellant, financial crisis of the appellant during the relevant period is the reason for delayed remittance. Though there was some crisis in the Plantation Industry during 1996, the same did not last beyond 2005. The documents produced by the appellant is not specific to the appellant establishment but is pertaining to the parent company which owns many estates. The documents now produced cannot therefore be relied on to decide the financial difficulty of the appellant establishment. The appellant failed to prove the financial position of the appellant establishment which results in an adverse inference. The documents produced by the appellant also pertains to the years 2007-2008 and 2008-2009. Non production of records in respect of the remaining period leads to the belief that the financial status of the appellant establishment was better during the subsequent years. The documents such as the

bankers letter dated 2006 cannot be taken as a conclusive proof for the financial status of appellant establishment for the period upto 03/2012. The respondent authority issued a summons along with a delay statement. The appellant was also given an opportunity for personnel hearing. A representative of the appellant also attended the hearing. No evidence whatsoever was produced before the respondent authority to prove financial constraints of the appellant establishment. After considering the submissions of the appellant, the respondent issued the impugned order. There is a specific finding by the respondent in the impugned order that the appellant establishment was not listed in the list of tea gardens adversely affected by the crisis affecting tea industry and relief recommended by the Government of India. It is therefore clear that the crisis in Plantation Industry has not affected the appellant in anyway. No mitigating circumstances are pleaded by the appellant for interfering with the impugned order issued under Sec 14B of the Act. In ***M/s. Hindustan Times Vs Union of India*** AIR 1998 SC 688, the Hon'ble Supreme Court held that the "default on the part of the employer based on the plea of power cut, financial

problems relating to other indebtedness etc cannot be a justifiable ground for the employer to escape the liability". The Hon'ble Supreme Court in ***Organo Chemicals Vs Union of India*** 1979 90020 LLT 416 SC held that "even if it is assumed that there was a loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time". The Hon'ble High Court of Kerala in ***Calicut Modern and Spinning and Weaving Mills Vs Regional PF Commissioner***, 1982 lab IC 1422 held that Paragraph 38 of EPF Scheme obliged the employer to make the payment within 15 days of close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the member employed by him, in the first instance.

5. The appellant filed a rejoinder denying the averments in the written statement filed by the respondent. All the relevant documents such as annual report were placed by the respondent authority before the respondent authority.

However the respondent authority failed to consider the same. The respondent organisation has issued a circular dated 15.05.2020 to assert that the provisions of 14B are attracted only when there is a positive evidence of mensrea on the part of the employer in committing the default. A copy of the said circular is produced and marked as Annexure A18. The decision of the Hon'ble Supreme Court of India in **Organo Chemicals Vs Union of India** 1979 (2) LLJ 416 is substantially changed by the introduction of Sec 7Q, charging interest and incorporation of the words "**by way of penalty**" in Sec 14B. The existence of mensrea or actusreus to contravene statutory provisions must also be held to be a necessary ingredient as held by Hon'ble Supreme Court in **Employees' State Insurance VsHMT Ltd. And Another**, AIR 2008 SC 1322. The legal position is further confirmed by the decision of the Hon'ble Supreme Court in **Assistant Provident Fund Commissioner and Another Vs Management of RSL Textiles India Private limited** 2017 (3)SCC 110. After introduction of Sec 7Q, the interest to be paid in the account of employees has already been covered.

6. The appellant establishment delayed remittance of contribution for the period from 12/2001 – 03/2012. The respondent therefore issued a notice along with a delay statement showing the delay in remittance of contribution monthwise and the proposed damages. A representative of the appellant attended the hearing and filed a detailed written statement. After considering the representation in detail and point wise, the respondent authority issued the impugned order. According to the learned Counsel for the appellant, the appellant establishment was in deep financial crisis during the relevant point of time. The appellant also pointed out that it is not the appellant establishment alone, but the whole Plantation Industry was in financial trouble during the relevant point of time. He also pointed out that the Government of Kerala and also Government of India were aware of the financial crisis and the respective Governments provided some concessions to the industry. According to the learned Counsel for the respondent, the crisis in the plantation industry which started in 1996 continued for some time and the appellants claim that the crisis continued beyond 2005 has no basis. Similarly in the package provided by



Government of India, the name of appellant establishment is not at all reflected which would further prove that there was no financial crisis for the appellant establishment during the relevant point of time. The appellant produced two page extracts of the balance sheet and Profit and Loss account for the period from 2001 – 2002 to 2010 – 2011 except for the year 2008 – 2009 to prove their financial difficulty. According to the learned for the respondent the Balance Sheet and Profit and Loss account itself is not a proof for proving the financial position of an establishment. That being the case, the two page extracts provided along with the rejoinder will not help the appellant in any way to substantiate their financial position. The Hon'ble Supreme Court of India has taken a consistent position that the figures reflected in the Balance Sheet and Profit and Loss account will have to be proved through a competent witness before the appropriate authority. The Hon'ble Supreme Court in ***Aluminium Corporation Vs Their Workmen and others***, 1963 2 LLJ 629 SC held that the mere statements in the balance sheet as regards current assets and current liability cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet

are to be established in proper evidence by those responsible for preparing balance sheet or by any other competent witnesses. The appellant produced the full text of the annual report for 2007 & 2008 along with the appeal memorandum. For the year ending 31.03.2007, it is seen that the appellant paid Rs.3,30,53,165/- as wages and for the year 2008 they paid salaries and allowance to the tune of Rs.3,06,89,255/-. For the year ending 31.03.2009, they paid an amount of Rs. 3,66,98,863/- towards salary, allowance and bonus. It is also seen that during these years the appellant had paid Provident Fund contribution also. For the year ending 31.03.2007 the appellant paid 23 lakh (approximately), for the year ending 2008 they paid 24 lakh (approximately) and for the year ending 2009 they paid 29.55 lakh towards Provident Fund contribution. From the available data it is clear that the appellant paid salary to its employees during the relevant point of time. When wages/salary is paid to the employees, the employee 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 employees is an offence of breach of trust under Sec 405/406 of Indian Penal

Code. Having committed an offence of breach of trust the appellant cannot plead that there is no mensrea or intentional delay in remittance of provident fund contribution atleast to the extent of employee's share, which amounts to 50% of the total contribution. The learned Counsel for appellant also argued that there was delay in initiating the process and therefore the process is barred by limitation. The Hon'ble Supreme Court of India in ***RPFC Vs KT Rolling Mills Pvt. Ltd***, 1995 AIR (SC) held that "we do not therefore, think if the order merits to be stuck down on the ground of delay, when it is also kept in mind that the delay in default related even to the contributions of employees, which money the respondent (after deduction of the same from the wages of the employee) must have used for its own purpose and that to without paying any interest, at the cost of those for whose benefit it was meant. Any difference stand would encourage the employer to thwart the object of the Act which cannot be permitted". In this particular case the delay in initiating the proceedings under 14B was 12 years. In ***M/s. K Street Lite Electric Corporation Vs Regional Provident Fund Commissioner***, (2001) 4 SCC 449 the Hon'ble Supreme Court

held that the delay in initiating proceedings under 14B of the Act will not be a ground for setting aside an order imposing damages. In ***Hindustan Times Ltd Vs Union of India***, 1998 AIR (SC) 688 (SC 2J) the Hon'ble Supreme Court held that the delay in initiating proceedings under 14B will not in anyway affect the proceedings as there is no limitation provided in the statute for computing and recovering the damages. Any other interpretations will only disturb the legislative intension. In this particular case, the delay was more than 14 years.

7. The learned Counsel for the appellant also referred to a circular dated 15.05.2020 issued by the Head Office of the respondent organisation. It is pointed out that this particular circular has no relevance to the present case as the same is issued in the context of delay in deposit of dues during lockdown to prevent Covid – 19.

8. Having clarified the legal and factual position, in the above paras, it is also relevant to add that the documents produced by the appellant shows that the appellant was running under loss during the relevant point of time. Though the learned Counsel for the respondent argued that the

documents produced is in respect of the parent company and not of the appellant establishment, the figures reflected in the documents produced are indicative of the financial status of the appellant establishment also. Taking into account the above aspect, it is felt that the appellant deserves some consideration as far as damages are concerned.

9. 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 70% of the damages assessed under Sec 14B of the Act.

10. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 70% of the damages assessed under Sec 14B of the Act.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer