



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

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

(Wednesday the, 16th day of March 2022)

APPEAL No. 495/2019

(Old No. ATA.479(7)2016)

Appellant : M/s. Churakulam Tea Estate Pvt.Ltd.
Vandiperiyar
Idukki – 685 533

By Adv. Sriram Parakkat

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 13.01.2022 and this
Tribunal-cum-Labour Court on 16.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KTM/407/ APFC/
Penal Damage/2015/8212 dated 15.07.2015 and Order No. KR/
KTM/407/APFC/Penal Damage/2014/17438 dated 28.01.2016

assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution from 03/2002 to 10/2005, 07/2006 to 02/2010, 10/2009 to 11/2012. The total damages assessed is Rs. 65,06,649 and Rs.62,59,791/- respectively

2. The appellant is a company registered under the companies Act and covered under the provisions of the Act. On 24.06.2003, the Association of Planters of Kerala convened a meeting to discuss the problems of the plantation industry. A copy of the same is produced and marked as Annexure A1. On 17.11.2003, the Association of Planters of Kerala notified the members that they met the Plantation Standing Committee on 21.06.2003 and decided to recommend plantation tax exemption for tea and coffee plantation for the current year. A true copy of the notice is produced and marked as Annexure A2. The Balance sheet and Profit & Loss A/c of the appellant establishment as on 31.03.2004 is produced and marked as Annexure A3. On 02.06.2004, Industries Department, Government of Kerala on the basis of the recommendations of the expert committee constituted by the Ministry of Commerce, Government of India has suggested

some relief measures to the plantation industry to prevent sickness from spreading. A copy of the order dated 02.06.2004 is produced and marked as Annexure A4. Government of Kerala vide notification dated 04.06.2004 exempted the plantation tax for tea and coffee plantation for the year 2003-04 and 2004-05. A copy of the notification is produced and marked as Annexure A5. The Association of Planters of Kerala circulated the above decision vide notice dated 28.06.2004, a copy of notice is produced and marked as Annexure A6. The report of the auditors as on 31.03.2005 is produced and marked as Annexure A7. On 09.06.2005, the Association of Planters of Kerala circulated a strike notice by trade unions from 05.06.2005. The auditor's report dated 03.09.2005 of Balance sheet and Profit & Loss A/c for the year ended 31.03.2005 is produced. The directors report of the appellant establishment on the audited balance sheet and Profit & Loss A/c for the year ended 31.03.2006 is produced and marked as Annexure A8. The directors report of the appellant establishment on audited Balance sheet and Profit & Loss A/c for the year ended 31.03.2007 is produced and marked as Annexure A10. The auditor's report dated 01.09.2007 along with balance sheet and Profit & Loss A/c

for the year ended 31.03.2007 is produced and marked as Annexure A11. The audited Balance sheet and Profit & Loss A/c as on 31.03.2008 is produced and marked as Annexure A12. The audited Balance sheet as on 31.03.2009 is produced and marked as Annexure A13. On 14.08.2009, there was a fire in the tea factory building and there was report damage worth 4.72 crores. A true copy of the FIR dated 14.08.2009 is produced and marked as Annexure A15. Photograph of burned and broken factory along with newspaper report is produced and marked as Annexure A16. The audited balance sheet as on 31.03.2019 is produced and marked as Annexure A17. The Profit & Loss A/c along with auditor's report as on 31.03.2011 is produced and marked as Annexure A18. The auditor's report and Balance sheet as on 31.03.2012 is produced and marked as Annexure A20. The respondent issued a notice dated 06.05.2014 under Sec 14B of the Act alleging delay in remittance of contribution. The Advocate appearing for appellant before the respondent pointed out certain anomalies in the delay statement. The appellant also contented vide its letter dated 30.06.2004 that the belated remittance of due was not deliberate but due to financial crisis experienced by the

appellant from 2002 onwards. It was also pointed out to the respondent authority that the industry as a whole is facing problem. The high input cost and increase in variables is also hurting the industry. The respondent authority issued the impugned order excluding the anomalies pointed out by the representatives of the appellant. The appellant vide letter dated 15.07.2015 pointed out certain further anomalies in the delay statement. The respondent authority considered the representation and issued a revised order dated 28.01.2016 reducing the damages. The respondent authority failed to exercise its discretion available under Sec 14B of the Act and Para 32A of EPF Scheme. The proceedings under Sec 14B was initiated after much delay, the respondent authority even failed to consider the loss occurred to the appellant due to the fire in its factory.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant establishment is liable to remit contribution within 15 days of closure every month. The appellant establishment defaulted in timely remittance of contribution from the period 03/2002 – 11/2012. Hence a notice

dated 06.05.2014 was issued to the appellant to show cause why damages envisaged under Sec 14B of the Act cannot be recovered. The appellant was also given an opportunity for personnel hearing. During the course of the proceedings, the appellant admitted the delay, though he pointed out certain mistakes in the delay statement. According to him, the delay in remittance of contribution was due to the financial crisis of the appellant establishment. The Hon'ble Supreme Court of India in **Hindustan Times case**, AIR 1998 SC 688 held that default on the part of the employer based on the plea of financial difficulty cannot be a justifiable ground for the employer to escape the liability. The appellant is a chronic defaulter in remittance of contribution. The appellant even violated the judgement of the Hon'ble High Court of Kerala granting liberal instalment facility. The Hon'ble High Court of Kerala in WP(C) No. 6057/2016, WP(C) No.9855/2017 and WP(C) No. 38394/2017 granted instalment facility to the appellant establishment to remit the contribution. However the appellant failed to comply with the direction of the Hon'ble High Court of Kerala. The respondent also pointed out the details of wilful, chronic and habitual default of appellant establishment in 10

instances were appellant remitted contribution belatedly and the respondent assessed damages and interests for belated remittances. The Hon'ble Supreme Court of India in **Organo Chemical Industry Vs UOI and Others**, held that "*There can be no doubt that the petitioners have been habitual defaulter in the matter of making contributions to the Employees' Provident Fund, Family Pension Scheme and payment of administrative charges from the very inception. They have deliberately concealed the facts pertaining to earlier defaults and the attendant levy of damages under Sec 14B of the Act. It would thus be manifest that the petitioners instead of making their contributions, deliberately made wilful defaults on one pretext or another and have been utilizing the amounts deducted from the wages of their employees, including their own contributions as well as administrative charges in running their business. The Regional Provident Fund Commissioner, therefore, rightly observed that the petitioners having regard to their past record must be visited with the maximum penalty*". In **New Commercial Mills Co. Ltd and Another Vs Union Of India and Others**, the Hon'ble High Court of Gujarat held that where the employer is a habitual defaulter in respect of payments under the

EPF and MP Act, 1952, financial hardships or constraints is not sufficient to mitigate damages. Sec 14B provides for no limitation. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd. Vs Union Of India***, AIR 1998 SC 688 held that in the absence of bar of limitation there is no principle of law which can debar the Provident Fund Commissioner from exercising their statutory powers under Sec 14B of the Act. The Hon'ble High Court of Punjab and Hariyana in ***Elsons Cotton Mills Ltd. Vs Regional Provident Fund Commssione***, 2001 (1) SCT 1101 (P&H)(DB) held that there is no bar of limitation of the proceedings under Sec 14B of the Act.

4. The learned Counsel for the respondent pointed out that the appeal is barred by limitation. It is seen that the respondent authority issued order dated 15.07.2015 assessing damages to the tune of Rs. 65,06,649/-. On a representation by the appellant, the respondent authority reduced the damages to Rs.62,59,791/- vide order dated 28.01.2016. The appeal is filed on 08.04.2016. Though there is delay in filing the appeal, it is within the condonable period of 120 days. Therefore the delay in filing the appeal is condoned and the appeal is admitted.

5. According to the appellant, the plantation industry in Kerala in general was undergoing severe financial crisis during the period 2002 – 2008. The appellant produced various documents to substantiate their claim, the appellant also produced the balance sheet and audit reports for the period from 2004 onwards to substantiate their claim that the appellant establishment was running under heavy loss. It is seen from the records that the appellant establishment was under net loss from 31.03.2003. Though for certain years the appellant made some profit, there was net loss during all these years. However it is seen that from the year 2009 onwards the appellant establishment is running on profit. The appellant also produced documentary evidence to prove that there was a fire in the factory of the appellant establishment on 13.08.2009 when huge losses were reported.

6. The learned Counsel for the respondent pointed out that the appellant is a chronic defaulter in remittance of Provident Fund contribution. He also narrated the detailed instances wherein the appellant even failed to comply with the instalment facilities granted by the Hon'ble High Court of Kerala through various judgements. The learned Counsel also pointed out that

there are many instances wherein the respondent assessed damages and interests against the appellant for belated remittance of contribution. According to him, the appellant was provided adequate opportunity by the respondent before the impugned orders are issued. The respondent also took into account all the corrections in the delay statement pointed out by the representative of the appellant during the course of the 14B procedure. He further argued that when the appellant is a deliberate and chronic defaulter, the appellant is not entitled for any relief under Sec 14B of the Act.

7. The documents produced by the appellant would definitely prove the crisis prevailing in plantation industry during 2002 – 2008 period. The Government of India and also Government of Kerala have provided some concessions like waiver of Plantation Tax during this period. The financial statements now produced by the appellant also would show the financial crisis of the appellant establishment upto 2008. As already pointed out the appellant establishment is running on profit from 2009 onwards and there is absolutely no justification for delayed remittance of contribution. The contention of the appellant is that

delay in remittance of contribution was not intentional and is only due to the financial crisis of the appellant during the relevant point of time. The learned Counsel for the respondent pointed out that the documents produced by the appellant in these proceedings would clearly show that the appellant paid the wages to its employees in time. When the wages are paid, the employees' share of contribution is deducted from the salary of the employees. Non remittance of employee 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 the delay in remittance of contribution was not intentional atleast to the extent of 50% of the total contribution. Further the question whether intention of parties is relevant under sec 14B was considered by the Hon'ble Supreme Court in a recent decision. 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.

8. As rightly pointed out by the learned Counsel for the respondent, there is no limitation for initiating the proceedings under Sec 14B of the Act.

9. Taking into account the financial position of the plantation industry during 2003 – 2008 in general, and also the financial position of the appellant establishment during the same period and also the loss due to the fire in the factory, the appellant is entitled for some relief with regard to damages under Sec 14B of the Act. It is also relevant to keep in mind that the appellant establishment was running on profit from 2009 – 2012 for which period also there was delay in remittance of provident fund contribution.

9. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages.

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

(V.Vijaya Kumar)
Presiding Officer