



सत्यमेव जयते

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

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

(Monday, the 18<sup>th</sup> day of April 2022)

**APPEAL No. 563/2019**

(Old No. ATA.975(7)2012)

- Appellants : 1. M/s. Kerala State Cashew Workers  
Apex Industrial  
Co-Operative Society Ltd. (CAPEX)  
P.B.No. 262, Mundakkal West  
Kollam – 691 001.
2. M/s. Navaikulam Cashew Workers  
Ind.Co.Op.Society Ltd.  
No. S.Ind. T 391, 28<sup>th</sup> Mile  
Navaikulam  
Trivandrum – 695 603.
- Respondent : The Assistant PF Commissioner  
EPFO, Regional Office,  
Pattom  
Trivandrum – 695 004

By Adv. Ajoy P.B.

This case coming up for final hearing on 17.02.2022 and  
this Tribunal-cum-Labour Court on 18.04.2022 passed the  
following:

**ORDER**

Present Appeal is filed from order No. KR/1205/RO/TVM/PD/VK/2012/3621 dated 18.05.2012 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/1994 to 06/2001. The total damages assessed is Rs.93,228/-. (Rupees Ninety three thousand two hundred and twenty eight only)

2. Appellant No.1, Kerala State Cashew Workers Apex Industrial Co-operative Society Ltd. (CAPEX Society) was registered in the year 1984 to work as an Apex Society to take care of the operations of 10 primary Co-operative Societies under Government of Kerala which includes appellant No.2, M/s.Navaikulam Cashew Workers Industrial Co-operative society Ltd. CAPEX procures raw cashew nuts, distribute the same to the primaries, get it processed and market the processed kernels. All this is done to provide continuous employment and job security to workers. The employees' strength of ten factories is above 5000. The Government of Kerala vide Kerala Cashew

Factories (Acquisition) Act 1974 acquired 65 cashew factories owned by private persons and remained closed during 1983 season. Subsequently the Acquisition Act was amended enabling the State Government to entrust the management of cashew factories to the workers co-operative society. Appellant No. 2 was formerly a private factory. It was acquired by the State Government and registered as a co-operative society on 27.07.1984. It became an affiliate of CAPEX from 1984. Appellant No.1, CAPEX society is the custodian of cash under bylaws. CAPEX is therefore the necessary party to the proceedings. The appellant was facing acute financial crisis from 01/1994 to 06/2001. The balance sheets for the period 1994 – 95 to 2001 – 2002 are produced and marked as Annexure P6Colly. The balance sheets of the appellants for the financial year 2010 - 2011 is produced and marked as Annexure P7. The appellant depends on the financial assistance from the State Government, Banks and other financial institutions. CAPEX society was defunct for the period from 08/2000 - 07/2003. The respondent ought to have appreciated that the CAPEX society through the

affiliated society worked for the welfare and benefit of the people belonging to the marginal section.

3. The respondent filed counter denying the above allegations. The appellants are covered under the provisions of the Act w.e.f. 30.09.1962. The appellant defaulted in payment of dues for the period from 01/1994 to 06/2001. The respondent therefore initiated action for levying damages vide notice dated 04.05.2012. The appellant was also given an opportunity for personnel hearing on 17.05.2012. A representative of the appellant attended the enquiry. After hearing the appellant, the respondent issued the impugned order.

4. The main ground pleaded by the appellant for belated remittance of contribution is that of financial difficulty. According to the learned Counsel for the respondent, the appellant failed to produce any documents before the respondent authority to substantiate the financial difficulty. In this appeal, the appellant produced balance sheet for the period from 1994 – 1995 to 2001 – 2002 to substantiate the claim of financial difficulty. The learned Counsel for the respondent pointed out that the balance sheet now produced by the appellant cannot be

relied on for reducing or waiving the damages as the same is not proved through a competent witness before the respondent authority. In Management of **Trichinopilly Mills Vs National Cotton Textile Mills Workers Union**, AIR 1916 SC 1003, the Hon'ble Supreme Court held that the balance sheet by itself will not prove the financial position of an establishment unless the figures reflected therein are proved through a witness before the lower adjudicatory forum. However it is seen from the extracts of balance sheet produced that the appellant establishment was running under severe loss during the relevant period. During 31.03.1995, the loss for the year was Rs.1,03,59,096 and the accumulated loss was Rs.15,44,84,479 during the year ending 31.03.2007, the loss was Rs.3,18,12,548/- and the accumulated loss has increased to Rs.87,67,85,758/-. It is seen that every year in between the appellant was running under loss. The learned Counsel for the respondent pointed out that the appellant has no case that the salary of the employees' was not paid in time. When salary of the employees was paid, the employees' 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 and the appellant establishment cannot claim any relief for the delayed remittance of atleast 50% of the contributions.

7. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that the interest of justice will be met if the appellant is directed to remit 60% of the damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed under Sec 14B of the Act.

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