



सत्यमेव जयते

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

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

(Wednesday the, 5th day of January 2022)

APPEAL No. 575/2019

(Old No. ATA . 487(7)2012)

Appellant : M/s Southern Cashew Exports
Karikode,
Chandanathoppe
Kollam – 691 014.

By Adv. B.Mohanlal

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Ponnamma Chambers
Kollam – 691 001.

By Adv.Pirappancode V S Sudheer

This case coming up for final hearing on 29.09.2021 and this Tribunal-cum-Labour Court on 05.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KLM/1221/PD/2011-12/2778 dated 29.02.2012 assessing damages under Section 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution from 07/2008 –

02/2009 and 03/2010 – 02/2011. The total damages assessed is Rs. 3,24,982/-/- (Rupees Three lakh twenty four thousand nine hundred and eighty two only)

2. The appellant is engaged in the business of processing of cashew nuts and is covered under the provisions of the Act. Due to severe financial difficulty, even the monthly salary of the employees was delayed. The appellant is depending on bank loans for maintaining the establishment. The appellant was offered a personnel hearing but could not attend the same as he was laid up. The respondent failed to provide the details of calculation of damages. The respondent failed to notice that the delay in remittance was not deliberate. Sec 14B as it stands now is purely punitive in nature. The respondent authority ought to have followed the guidelines given by the Hon'ble Supreme Court of India in ***M/s. Hindustan Steel ltd Vs State of Orissa***, AIR 1970 SC 253. The Hon'ble Supreme Court in ***Regional Provident Fund Commissioner Vs SD College***, JT 9097(10) SC 638 and ***M/s. Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 688, held that the Commissioner has the discretion to reduce the damages. The respondent also failed to consider the question whether there was any conscious failure on the part of

the appellant in payments of contributions under the provisions of the Act.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. Provident Fund and other contributions have to be deposited by the appellant by 15th of next month. As such, any effort by the employer to deny the employees the legitimate dues, which they have rightfully earned in terms of the provisions of the Act need to be looked upon with suspicion whatever the details given by the appellant. The appellant establishment was covered under the provisions of the Act w.e.f. 13.09.1962. The appellant delayed the remittance of contribution for the period from 07-2008 – 02/2009 and 03/2010 – 02/2011. Any belated remittance will attract damages under Sec 14B and interest under Sec 7Q. The respondent therefore issued notice dated 25.01.2012 along with the statement of delayed remittance for the above period. The appellant was also given an opportunity for personnel hearing on 06.02.2012. A copy of the notice dated 25.01.2012 and its enclosures are produced and marked as Exhibit R1. The appellant acknowledged the receipt of this summons, a copy of

the acknowledgement card is produced and marked as Exhibit R2. None attended the hearing on 06.02.2012. The enquiry was adjourned to 27.02.2012. A representative of the appellant attended the hearing and admitted the delay. The respondent therefore issued the impugned order. Recurring losses or financial stringency cannot be a ground for non-payment of statutory dues in time. In ***M/s. Sky Machinery Ltd. Vs RPFC***, 1998 LLR 925, the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waiving penal damages for delayed deposit of Provident Fund contribution. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India***, 1998 (2) SCC 242, held that financial difficulty will not be relevant explanation to avoid liability for payment of dues. Sec 14B authorises the respondent authority to impose punitive damages and there by prevent the employers for making defaults. In the absence of such provision, the employers could deliberately default in payment of their Provident Fund contribution and in the meanwhile utilise both the employees' and employers' contribution in their business.

4. There is no dispute regarding the fact that there was delay in remittance of contribution during the relevant period.

According to the learned Counsel for the appellant, the delay in remittance was due to the financial difficulty of the appellant establishment. The learned Counsel for the respondent pointed out that financial difficulty cannot be a justifiable ground for not remitting the contribution. According to him, the appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. The non-payment 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 and therefore the appellant cannot plead that there was no intentional delay atleast to the extent of 50% of the total contribution. The learned Counsel for the respondent also pointed out that the appellant failed to produce any documents to substantiate their financial difficulty. In ***M/s. Kee Pharma Ltd Vs APFC***, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages under Sec 14B of the Act. In ***Sree Kamakshi Agency Pvt. Ltd. Vs EPF Appellate Tribunal***, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground

while levying damages under Sec 14B, if the appellant pleads and produces documents to substantiate the same. In ***Elstone Tea Estates Ltd Vs RPFC***, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authority with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. The appellant failed to produce any documents in this appeal also. Having failed to substantiate the claim of financial difficulties, the appellant cannot come up in appeal and plead that delay in remittance was due to financial difficulty of the appellant establishment.

5. The learned Counsel for the appellant also argued that the appellant provided adequate opportunity for personnel hearing. It is seen that the appellant received the summons, acknowledged the same and failed to attend the hearing on the appointed day. On the Second day of the hearing a representative of the appellant attended the hearing and admitted the delay in remittance of contribution. The Hon'ble High Court of Bombay, in ***Super Processors Vs Union of India***, 1994 3 LLJ 564 (Bom), held that "since the petitioner have chosen not to file reply to the show cause notice and not to lead evidence in

support thereof, there was nothing which was required to be adjudicated upon. Hence the impugned order cannot be assigned on the ground that it is not a speaking order". In view of the above, there is no basis in the claim of the learned Counsel for the appellant that the appellant was not given adequate opportunity and the impugned order is a non-speaking order.

6. The learned Counsel for the appellant also pleaded that there was no intentional delay in remittance of contribution and there was no mensrea in delayed remittance of contribution. The learned Counsel for the respondent pointed out that the non-payment of employee's share of contribution in time would clearly establish the deliberate and intentional delay in 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 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. Considering the facts, circumstances, pleadings and arguments in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer