



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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer.
(Tuesday the 2nd day of November 2021)

APPEAL No. 586/2019

Old No. ATA 636 (7) 2012

Appellant

M/s. Manaltheeram Beach
Resort Pvt. Ltd.
Balaramapuram, Chowara.P.O.
Trivandrum – 695 501

By Adv. Anil Narayanan

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Pattom, Trivandrum – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 02.08.2021 and this Tribunal-cum-Labour Court on 02.11.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/16128/RO/TVM/PD/VK/2012/4948 dated 27.06.2012 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 11/2009 – 02/2011. Total damages assessed is Rs.1,30,990/- (Rupees One lakh thirty thousand nine hundred and ninety only)

2. The appellant is an establishment engaged in the business of Hotel and Restaurant and is covered under the provisions of the Act. The belated remittance of contribution was not intentional and deliberate. There was some short remittance by the appellant for the period from 03/2010 – 02/2011. The appellant remitted the contribution immediately after assessment. The appellant was given an opportunity for personnel hearing. A representative of the appellant attended the hearing and submitted that the delay was due to the reasons beyond the control of the appellant. Without considering the representations made by the appellant, the respondent authority issued the impugned order. Though financial difficulties were pleaded, the same was not considered by the respondent authority. Sec 14B of the Act as it stands now, is purely punitive in nature and therefore quasi criminal. The Hon'ble Supreme Court of India in ***M/s. Hindustan Steel Ltd Vs State of Orissa***, AIR 1970

SC 253 held that “an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of contemptuous or dishonest, or acted in conscious disregard of its obligation”. The respondent authority ought to have considered the fact that the appellant establishment was in dire financial status and the wages of the employees were not paid to them.

3. Respondent filed counter denying the above allegations. Appellant was an establishment covered under provisions of the Act. There was delay in payment of Provident Fund and other statutory dues including administrative charges for the period from 11/2009 to 02/2011. Any delay in remittance of contribution will attract damages under Sec 14B of the Act read with Para 32 A of EPF Scheme. A summons dated 01.06.2012 was issued to the appellant establishment along with a detailed delay statement. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended

the hearing and submitted that the delay in remittance of contribution was not deliberate but due to shortage of funds and also assured that he would remit the damages immediately. The appellant establishment is a chronic defaulter in remitting contributions. The appellant delayed contributions during 03/2006 to 11/2006, 03/2008 to 11/2008, 12/2007 to 11/2008, 04/2009 to 11/2009, 03/2009 to 01/2010, 11/2009 to 02/2011, 03/2011 to 02/2012, 03/2013 to 02/2016, 03/2013 to 02/2016, 03/2016 to 12/2016 and 01/2017 to 02/2018. Though the appellant pleaded that the delay in remittance was due to financial difficulty, the same was not substantiated before the respondent authority. The financial difficulty claimed by the appellant is only a defence to delay the payment of employees' share of contribution deducted from the salary of the employees. The appellant is liable to remit the contribution, both employer and employees, before 15th of the next month. It is a fact that when there is delay in remittance of contribution, the respondent organisations is suffering loss by not being able to invest the fund in time. The Hon'ble

Supreme Court of India in ***M/s. Organo Chemical Industries Vs Union of India***, 1979 AIR (SC)1803 held that “this social security measure is a human homage, the state pays to Article 39 and 41 of the constitutions. The viability of the project depends on the employer duly deducting the workers contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform this function”. The Hon’ble Supreme Court also 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. Besides 50% of the contributions deposited late represented the employees’ share which had been deducted from the employees’ wages and was a trust money with the employer for deposit in the statutory fund. The delay in deposit of this part of the contribution amounted to breach of trust and does not entitle the employer to any consideration

for relief.” The Hon’ble Supreme Court in **Chairman, SEBI Vs Sriram Mutual Fund** 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provisions of Civil Act.

4. There is no dispute regarding the fact that there was delay in remittance of contribution by the appellant. It is also admitted that the appellant was provided with a detailed delay statement. The appellant was also offered an opportunity for personnel hearing. The main ground pleaded by the appellant before the respondent authority was that of financial difficulty. The appellant however failed to substantiate the ground of financial difficulty before the respondent authority. The appellant also failed to substantiate the financial difficulty in this appeal. No documents whatsoever is produced by the appellant to substantiate their claim of financial difficulty.

5. 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 RPF**, 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. 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.

6. Though the learned Counsel for the appellant pleaded that there was a delay in payment of wages, the same was also not substantiated by the appellant. According to the learned Counsel for the respondent, the appellant even failed to remit the employees share of contribution deducted from

the salary of the employees in time. Non remittance of employees share of contribution deducted from the salary of the employees is an offence of breach of trust as pointed out by the Hon'ble Supreme Court in **Organo Chemical case** (Supra). Having committed an offence of breach of trust under Sec 405/406 of Indian Penal Code, the appellant cannot plead that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of total contribution.

7. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer