



सत्यमेव जयते

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

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

(Tuesday the, 11<sup>th</sup> day of January 2022)

**APPEAL No. 595/2019**

(Old No. ATA.773(7)2013)

Appellant : M/s. Mangalam Publications (India)  
Pvt. Ltd.  
S.H.Mount.P.O.,  
Kottayam – 686 006

By Adv. V. Krishna Menon

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office,  
Post Office Road, Thirunakkara  
Kottayam – 686 001.

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 11.10.2021 and this Tribunal-cum-Labour Court on 11.01.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KTM/PD/ RPFC/ 5975 dated 02.09.2013 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 03/2005 – 02/2008.

The total damages assessed is Rs. 14,50,754/- (Rupees Fourteen lakh fifty thousand seven hundred and fifty four only)

2. The appellant is a newspaper establishment covered under the provisions of the Act. Due to heavy financial constraint, the appellant could not pay Provident Fund contribution for the period from 03/2005 – 02/2008 in time. The delay was due to reasons beyond the control of the appellant. The respondent issued a show cause notice dated 14.01.2009 proposing to impose damages for the delay in remittance of contribution for the period from 03/2005 – 02/2007. The respondent issued another notice dated 06.02.2009 proposing to levy damages for the period upto 02/2008. The appellant submitted a written statement dated 16.02.2009. A representative of the appellant attended the enquiry and made oral submissions. The representative of the appellant submitted that the delay in remittance was not intentional and was only due to the financial constraint of the appellant establishment. Ignoring the contentions, the respondent issued an order dated 27.02.2009, a copy of which is produced and marked as Annexure A1. Aggrieved by the said order, the appellant filed an appeal as ATA No.158(7)/2009 before the EPF Appellate Tribunal, New Delhi. The Honourable Tribunal as per

order dated 05.01.2011 upheld the financial constraints of the appellant establishment and remanded the matter to the assessing officer for fresh consideration. The order specifically directed the authority to assess the liability at the rate of 22% annually inclusive of interest. The true copy of the order dated 05.01.2011 is produced and marked as Annexure A2. Against the order of EPF Appellate Tribunal, the respondent approached the Hon'ble High Court of Kerala in W.P.(C) No.14478/2011. The Hon'ble High Court while refusing to interfere with the order of remand, as per its judgement dated 02.04.2013 clarified that it is open to the Assistant Provident Fund Commissioner to levy the quantum of damages under Sec 14B of the Act in the light of the observations made by the Tribunal. A true copy of the judgement of the Hon'ble High Court dated 02.04.2013 is produced and marked as Annexure A3. The respondent therefore posted the matter for hearing on 02.09.2013. A representative of the appellant attended the hearing and submitted the financial difficulty as the reason for the delayed remittance of contribution. The respondent thereafter issued the impugned order after giving credit to the amount of Rs. 5 lakh already remitted by the appellant and assessing the damages as Rs.14,50,754/-. A copy of the order dated 02.09.2013

is produced and marked as Annexure A4. The respondent failed to exercise his discretion available under Sec 14B of the Act. The finding of the respondent that financial constraint is not a relevant reason while imposing damages is not sustainable. Para 32 of EPF Scheme is only a guideline in the matter of imposition of damages and the percentage fixed is not absolute. The decision of the respondent is influenced by irrelevant considerations. The Hon'ble High Court of Kerala in ***RPFC Vs Harrisons Malayalam Ltd.*** 2013 (3) KLT 790, held that while considering penal damages under Sec 14B of the Act, financial constraints of the establishment is also a relevant factor.

3. The respondent filed counter denying the above allegations. The appeal is bad for non joinder of necessary parties. The appellant delayed remittance of contribution and hence penal damages under Sec 14B was imposed on the appellant vide order dated 27.02.2009 for delayed remittance of dues from 03/2005 – 02/2008, amounting to Rs. 30,96,089/-. The appellant moved EPF Appellate Tribunal and the Tribunal remanded the case for assessment of damages inclusive of interest at the rate of 22%. The respondent challenged the order in W.P.(C) No.14478/2011 before the Hon'ble High Court of Kerala. The Hon'ble High Court

vide its judgement dated 02.04.2013 affirmed the remand order by the Tribunal but set aside the direction to assess the liability at 22% inclusive of interest and the question was left open. The respondent therefore held fresh enquiry under Sec 14B and assessed damages of Rs.19,50,754/-. After giving credit to Rs.5,00,000/- already paid by the appellant, the damages was assessed as Rs. 14,50,754/-. Prior to the amendment of table under Para 32A w.e.f. 26.09.2008, the rate of damages was inclusive of interests @ 12%. The original 14B order dated 27.02.2009 is based on this table. Therefore the respondent revised the damages at the prescribed rates w.e.f. 26.09.2008 under Para 32A of the Act. The appellant pleaded financial difficulty as a ground for delayed remittance of contribution. However no evidence was adduced to establish the plea of financial constraints. There is no averments as to how the appellant suffered losses and whether the loses were due to factors beyond the control of the appellant. Self inflicted losses cannot be used to escape the natural consequences therefrom, including levy of penal damages under Sec 14B. The Hon'ble Supreme Court of India in ***Hindustan Times Vs Union of India***, AIR 1998 SC 688, held that the financial constraints cannot be a justifiable ground

for the employer to escape Provident Fund liability. The appellant establishment is a chronic defaulter in payment of Provident Fund dues as well as a habitual litigant. In ***Calicut Modern Spinning and Weaving Mills Vs RPFC***, 1982 LAB IC 1422, the Division Bench of Hon'ble High Court of Kerala held that Paragraph 38 of EPF Scheme oblige 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 contributions payable by himself and on behalf of the member employed by him, in the first instance. Therefore the delay by the appellant in remittance of contribution under the Act is wilful and deliberate, warranting damages under Sec 14B of the Act.

4. The appellant delayed remittance of contribution for the period from 03/2005 to 02/2008. The respondent authority therefore initiated action under Sec 14B and issued order dated 27.02.2009 imposing an amount of Rs. 30,96,089/- under Sec 14B of the Act. The appellant challenged the order in appeal before the EPF Appellate Tribunal in ATA No.158(7)/2009. Vide order dated 05.01.2011, the EPF Appellate Tribunal remanded the matter back to the assessing officer for assessing damages and interest @ 22% per annum. The respondent challenged the above

said order before Hon'ble High Court of Kerala in W.P.(C)No.14478/2011. The Hon'ble High Court while upholding the remand held that "the direction that liability shall be assessed at 22% inclusive of interest in the Appellate order is set aside for limited purpose and the question is left open". The respondent authority therefore initiated fresh enquiry under Sec 14B of the Act. After taking into account the changes incorporated under Para 32A of EPF Scheme and also the remittance of Rs. 5,00,000/- made by the appellant establishment during the pendency of the processing issued in the impugned order quantifying the outstanding damages as Rs. 14,50,754/-.

5. In this appeal, the learned Counsel for the appellant challenged the impugned order on the ground that the delay in remittance was due to the financial constraints of the appellant establishment, relying upon the decision of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd (Supra)**. It was also pleaded that the EPF Appellate Tribunal approved the financial constraints of the appellant. However on perusal of the Annexure A2 order it is seen that the EPF Appellate Tribunal has relied on the decision of the Hon'ble High Court of Madras in **M/s. Shanthi Garments Vs RPFC**, 2003 (1) CLR 228 and held

that the delay in remittance was not intentional and therefore reduced the damages and interest to 22% per annum. The Hon'ble High Court of Kerala remanded the matter to the respondent authority after setting aside the direction that the liability shall be assessed at 22% inclusive of interest in view of the fact that there was no evidence to hold that the establishment deliberately defaulted in payment of contribution even after having sufficient funds. In the above background, it was upto the appellant to produce evidence to substantiate the claim of financial difficulty before the respondent authority atleast in the 2<sup>nd</sup> round of litigation. The appellant failed to produce any documents before the respondent authority or in this appeal to prove the financial difficulty during the relevant point of time. 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. 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. According to the appellant, there was no intentional delay or mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to remit even 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 under Sec 405/406 of Indian Penal Code. Therefore the appellant cannot claim any relief for the delay in remittance of contribution atleast to the extent of 50% of the total 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. The learned Counsel for the respondent pointed out that the appellant is a chronic defaulter and pointed out 14 instances wherein the appellant either failed to remit the contribution or failed to remit the damages after availing the instalment facilities granted by the Hon'ble High Court of Kerala. In this particular case also, it can be seen that the default pertains to the periods 03/2005 to 02/2008 and the appellant succeeded in delaying the remittance even after 14 years. It is also seen that the respondent authority has reduced the damages reportedly due to the amendment in Para 32A of the Scheme.

8. 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