



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

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

(Monday, the 21st day of March 2022)

APPEAL No. 696/2019

Appellant : M/s. Government Orange and
Vegetable Farm
Nelliyampathy
Palakkad – 678 508.

By Adv. Varghese John

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Eranhipalam.P.O.
Kozhikode – 673 006

By Adv.(Dr)Abraham P Meachinkara

This case coming up for final hearing on 30.12.2021 and this Tribunal-cum-Labour Court on 21.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KKD/23668/ENF-4(2)/14B/2019-20/3276 dated 19.09.2019 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 04/2017 – 05/2019. The total damages assessed is Rs. 2,35,282/-

(Rupees Two lakh thirty five thousand two hundred and eighty two only)

2. The appellant is an establishment covered under the provisions of the Act. The appellant was regular in compliance. However during April 2017 to May 2019, the appellant could not remit the contribution in time. The respondent, therefore, issued notice dated 11.07.2019 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A copy of the show cause notice is produced and marked as Annexure A1. A representative of the appellant attended the hearing on 06.09.2019. During the course of hearing, the representative of the appellant informed the respondent that the appellant is a Government institution and there was no mensrea on the part of the appellant. Ignoring the contentions of the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A2. The respondent authority also issued a separate order assessing interest under Sec 7Q, a copy of which is produced and marked as Annexure A3. In ***Employees Provident Fund Organisation Vs Sreekamakshy Agency (Pvt) Ltd.***, 2013 (2) KLT 996, the Hon'ble High Court of

Kerala held that “when the contribution has been paid and if it is found that there was no deliberate in action on the part of the petitioner in paying the amount but was on account of certain financial crisis, such matters are required to be considered by the appropriate authorities”. The Division Bench of the Hon’ble High Court of Kerala in ***Regional Provident Fund Commissioner Vs Harrison Malayalam Ltd.*** also held that financial difficulties shall be considered while deciding the quantum of damages. In ***Assistant Provident Fund Commissioner Vs Management of RSL Textiles India Pvt. Ltd.***, 2017 (3) SCC 110, the Hon’ble Supreme Court held that the presence or absence of mensrea and/or actus reus would be a determinative factor in imposing damages under Sec 14B.

3. The respondent filed counter denying the above allegations. The appellant failed to pay the contributions within the due date as prescribed in the Para 30 of EPF Scheme. The respondent therefore issued a show cause notice to the appellant along with a detailed month wise delay statement. The appellant was also given an opportunity for personnel hearing on 06.09.2019. A representative of the appellant attended the

hearing on 06.09.2019 and admitted the delay in remittance. The representative only pleaded that the appellant is a Government concern and therefore requested for waiver of damages. After taking into account the submissions made by the appellant, the respondent issued the impugned order. The appellant establishment is bound to pay the dues within 15 days of close of every month as mandated under Para 30 of EPF Scheme. When there is delay, the appellant is liable to remit damages and interests under Sec 14B and Sec 7Q respectively. The Division Bench of the Hon'ble High Court of Kerala in ***Calicut Modern Spinning and Weaving Mills Ltd. Vs RPFC***, 1982 KLT 303, held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that wages have been paid or not. The Hon'ble Supreme Court of India in ***Chairman, SEBI Vs Sri Ram Mutual Fund***, 2006 (5) SCC 361, held that mensrea is not an essential ingredient for contravention of the provisions of Civil Act.

4. The appellant delayed remittance of provident fund contribution for the period from 04/2017 – 05/2019. The respondent therefore initiated action for assessing damages under

Sec 14B of the Act. A show cause notice was issued to the appellant along with month wise details of delay. The appellant was also given an opportunity for personnel hearing. The only ground taken by the appellant before the respondent authority is that the appellant establishment is a Government institution and therefore requested for waiver of damages.

5. In this appeal also the learned Counsel for the appellant, argued that being a Government institution, the damages for belated remittance of contribution can be reduced or waived. Being a Government organisation, the appellant shall be a model employer and only on the ground of being a Government establishment, the damages can neither be reduced nor waived. The appellant establishment has given no reasons why the remittance of contribution is delayed. Though there is a vague reference to financial difficulty, no document to support the financial difficulty is produced before the respondent authority and also in this appeal. 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. Another ground pleaded by the learned Counsel by the appellant is that of mensrea. The learned Counsel for the appellant argued that there was no intentional delay in remitting the contribution. He also pointed out that there is no mensrea in delayed remittance of contribution. The learned Counsel for the

respondent pointed out that the appellant failed to pay even the employees share of contribution deducted from the salary of the employees. The appellant has no case that the wages of the employees were not paid in time. When the wages are paid, the employee's share of contribution is deducted from the salary of the employees. 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. 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 evidences in this appeal, I am not inclined to the impugned order only on the ground that the appellant is a Government institution.

Hence the appeal is dismissed

Sd/-
(V.Vijaya Kumar)
Presiding Officer