



सत्यमेव जयते

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

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

(Friday the 27th day of August 2021)

APPEAL No.761/2019

Old. No. ATA 377(7)2012

Appellant : M/s. Mathstraman Manufacturers
and Traders Private Limited
Plot No. 71, 72, Major Industrial Estate
South Kalamassery
Ernakulam – 683 109

By Adv. John Mani V

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor,
Kochi – 682 017

This case coming up for final hearing on 27.08.2021 and this Tribunal-cum-Labour Court on same day passed the following:

ORDER

Present appeal is filed from order No.KR/KC/21567/
Damages Cell/2012/17224 dated 16/02/2012 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 03/2008 – 02/2010. Total damages assessed is Rs.1,62,958/-. (Rupees one lakh sixty two thousand nine hundred and fifty eight only).

2. The present appeal was filed before EPF Appellant Tribunal, New Delhi as ATA No. 377(7)2012. The appeal was admitted by the Tribunal on 03.07.2012. Thereafter the appellant remained absent. Therefore the appeal was dismissed for default on 04.03.2014. The restoration application filed by the appellant was allowed by the Tribunal on the condition that the appellant shall pay a cost of Rs.10,000/- to be deposited with the respondent authority within 4 weeks of the order. The learned Counsel for the appellant could not confirm the remittance of the amount as directed by the EPF Appellate Tribunal.

3. Present appeal is therefore required to be dismissed on that ground alone.

4. However further going into the merits of the case, it is seen that the appellant has pleaded that there was delay in remittance of contribution due to financial difficulty. However

appellant failed to produce any documents to substantiate the claim of financial difficulty.

5. In ***M/s. KeePharma 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. In the absence of any evidence, it is not possible to consider any mitigating circumstance warranting interference with the impugned order. It is seen that the respondent authority has taken into account all the submissions made by the representative of the appellant and corrected the quantification of dues accordingly. During the course of hearing the learned Counsel for the appellant submitted that the appellant establishment had gone under NCLT and sought time to produce the orders of Hon'ble NCLT. The appellant could not produce any documents inspite of the fact that adequate time was granted for the same.

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

8. Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer