



सत्यमेव जयते

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

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

(Friday the 19th day of November, 2021)

APPEAL No.319/2018

Appellant : M/s.Bombay Rayon Fashions Ltd
Kinfra International Apparel Parks
Thumba
Trivandrum – 695586

By Adv.Ajith S. Nair

Respondent : The Regional PF Commissioner-I
EPFO, Regional Office, Pattom
Trivandrum – 695004

By Adv. S.Sujin

This case coming up for final hearing on 12.08.2021 and this Industrial Tribunal-cum-Labour Court on 19.11.2021 passed the following:

ORDER

Present appeal is filed against order no.KR/TVM/16734/Damages Cell/2018-19/2909 dt.19.07.2018 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 06/2015 to 09/2016. The total damages assessed is Rs.16,90,583/-.

2. The appellant is a company incorporated under the provisions of the Companies Act, 1956 engaged in the business of manufacturing and exporting of apparels. The appellant is covered under the provisions of the Act. The appellant was facing acute financial crisis due to various reasons. The appellant is engaged in the field of manufacturing and export of apparels and the industry has faced set back due to economic recession. The appellant is finding it difficulty to meet the day to day affairs of the company from 2012 onwards. The salary of the employees were also in arrears in these periods. The company has not paid any wages or deducted any contribution towards provident fund from the employees. The respondent issued a notice alleging delay in remittance of contribution. The respondent initiated proceedings for imposing of damages for the period from 06/2015 to 07/2016 and the damages were imposed as per order dt.08.08.2017 and against the said order the appellant has preferred Appeal no.53/2017 and is pending. In the notice issued by the respondent and in the order which is impugned in the appeal, the respondent has imposed damages for the period from 06/2015 to 09/2016. As already pointed out the damages were already levied for the period 06/2015 to 07/2016 as per order dt.08.08.2017. The appellant informed the respondent the reason for delayed remittance of contribution. However without considering the representation of the appellant, the respondent issued the

impugned order. As already pointed out there is an overlap in the periods for which damages is assessed for the same period. Damages have already been imposed by the respondent for 06/2015 to 07/2016 and appeal is before this Tribunal. The respondent was aware of the financial difficulties of the appellant establishment and therefore it ought to have reduced or waived damages. The various High Courts and the Hon'ble Supreme Court has held that mensrea is a must for imposing damages. It is also held that financial difficulty is a mitigating circumstances to be considered while levying damages U/s 14B of the Act. The appellant informed the respondent that the appellant establishment is under Corporate Debt Restructuring Scheme and the finance of the company is controlled by Consortium of Banks. In such circumstances the respondent ought to have reduced or waived damages.

3. The respondent was given opportunities from 09.07.2019 onwards to file written statement. In spite of specific directions, the respondent failed to file any counter even on 12.08.2021. At the time of hearing the appeal, the learned Counsel for the respondent submitted that a detailed argument note will be filed, but it is seen that no argument note is filed even after 3 months of hearing the appeal.

4. The learned Counsel for the appellant has taken a specific stand that there is overlap in periods of assessment. According to him, the respondent

authority has already issued an order assessing damages for belated remittance of contribution for the period from 06/2015 to 07/2016 vide order dt.08.08.2017. He also submitted that the appeal against the said order is pending before this Tribunal. It is seen that, in the impugned order the respondent authority has assessed damages for belated remittance of contribution for the period from 06/2015 to 09/2016. Such duplications or overlaps are possible when contribution for a month paid in instalments. However in the absence of any clarification either through written statement or argument note from the respondent, it is not possible to decide the matter either way. Hence the only possibility is to remand the matter back to the respondent to examine the whole issue and incorporate necessary corrections, if required, before finalising the matter. Considering the lack of clarification on the side of the respondent authority on the issue of overlapping periods, I am not inclined to accept the impugned order.

Hence the impugned order is set aside and the matter is remitted back to the respondent to re-assess the damages, if any, after issuing notice to the appellant, within a period of 6 months.

Sd/-

(V. Vijaya Kumar)
Presiding Officer