



सत्यमेव जयते

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

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

(Monday the 22<sup>nd</sup> day of November, 2021)

**APPEAL No.384/2018**

(Old no.365(7)2014)

Appellant : M/s.Classic Coir Factory  
IV/833, MSP, Valavanad  
Pollethai P.O.  
Alappuzha – 688567

By Adv.R. Sankarankutty Nair

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office, Kaloor  
Kochi - 682017

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 11.08.2021 and this Industrial Tribunal-cum-Labour Court on 22.11.2021 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KCH/21918/DAMAGES CELL/2014/18400 dt.17.03.2014 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belted remittance of contribution

for the period from 11/2005 to 11/2009. The total damages assessed is Rs.84,575/-.

2. The appellant is engaged in manufacturing and exporting of coir products. The appellant establishment was covered under the provisions of the Act vide coverage notice dt.29.06.2007 with retrospective effect from November 2005. The appellant started remitting contribution immediately on receipting the coverage notice. Though the appellant did not recover the employees' share of contribution for the pre-discovery period, the same was also paid by the appellant. There was no wilful delay in remitting the contribution on the part of the appellant. The respondent authority issued an earlier order which was challenged by the appellant before the EPF Appellate Tribunal as ATA No.804(7)2011. The Hon'ble Tribunal set aside the order and remitted the case back to the respondent for fresh disposal. Present enquiry was initiated on the basis of the direction by the Hon'ble EPF Appellate Tribunal. Copy of the order dt.04.04.2013 issued by the EPF Appellate Tribunal is produced and marked as Annexure A2. Thereafter the respondent issued summons dt.01.10.2013 which is produced as Annexure A3 series. Appellant filed a detailed statement disputing the claim of damages on 29.10.2013, a copy of which is produced and marked as Annexure A4. Copy of the coverage notice dt.29.06.2007 issued by the respondent is produced as Annexure A6. A

copy of the letter dt.25.06.2007 sent to the Enforcement Officer is produced as Annexure A7. As held by the Hon'ble Supreme Court of India, the absence of existence of mensrea or acuts reus to contravene a statutory provision is essential for levying damages U/s 14B of the Act. Without considering any of the contentions the respondent authority issued the impugned order.

3. Respondent filed counter denying the above allegations. The respondent authority issued a levy order dt.14.10.2011 assessing damages for the period from 11/2005 to 11/2009. The appellant filed an appeal before the EPF Appellate Tribunal which was allowed vide order dt.04.04.2013 and remanded the case back to the respondent for fresh disposal. Hence a fresh enquiry was initiated U/s 14B. The appellant was covered in the year 2007 w.e.f. 01.11.2005 as the appellant establishment was having 20 or more employees. The respondent covered the appellant establishment retrospectively on the basis of a complaint received from the employees and the inspection conducted by the Enforcement Officer. The appellant failed to satisfy the statutory requirement by covering the establishment from 01.11.2005 itself. This necessitated retrospective coverage in 2007 w.e.f. 01.11.2005. The appellant tried to evade its statutory obligation by delaying the coverage which led to the complaints from their own employees. The respondent authority investigated the complaint and covered the establishment

from due date. In **Chairman, SEBI Vs Sriram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act.

4. There is no dispute regarding the fact there was delay in remittance of provident fund contribution by the appellant establishment. According to the learned Counsel for the appellant, the delay occurred in view of the delayed coverage of the appellant establishment. According to him, the appellant establishment was covered in the year 2007 w.e.f. 01.11.2005. According to the learned Counsel, the appellant remitted both shares of contribution immediately after receipt of the coverage memo. According to the learned Counsel for the respondent it was the statutory obligation of the appellant establishment to ensure coverage of the appellant establishment and compliance under the provisions of the Act when the statutory requirements are met. The appellant was aware that the appellant establishment was coverable w.e.f. 01.11.2005. He did not remit the contribution in respect of its employees. Therefore the employees filed a complaint with the respondent authority. The respondent authority investigated the matter and covered the appellant establishment w.e.f. 01.11.2005. The EPF Act, acts on its own force and therefore the appellant establishment cannot claim that retrospective coverage of the appellant establishment led to delayed remittance of

contribution. The appellant cannot be given the benefit of his own default and violation of the provisions of the Act.

5. The learned Counsel for the appellant also pointed out that there was no mensrea in belated remittance of contribution. The learned Counsel for the respondent argued that there was mensrea in view of the fact that the appellant establishment violated the provisions of the Act by not extending social security benefits to its employees from date of eligibility.

6. The question regarding the applicability of mensrea in Sec 14B proceedings is considered by Hon'ble Supreme Court in a recent decision. After referring to its own earlier decisions in **McLeod Russell India Ltd Vs RPFC and others**, 2014 (15) SCC 263 and **APFC, EPFO and other Vs The Management of RSL Textiles India Pvt Ltd**, 2017 3 SCC 110 the Hon'ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs RPFC**, Civil Appeal no.2136/2012 held that

“ Para 17. Taking note of three-Judge Bench of this Court in **UOI 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 the payment of EPF contribution by the employer under the Act is a *sine qua non* for the imposing of levy of damages U/s 14B of the

Act, 1952 and *mensrea or actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations and liabilities”.

In view of the above decision of the Hon'ble Supreme Court the law is now settled that *mensrea* is not a relevant consideration while imposing damages U/s 14B of the Act.

7. However considering the fact that the appellant establishment is covered retrospectively and both shares of contribution for the retrospective period is paid by the appellant establishment, it is felt that the appellant can be given some accommodation as far as damages are concerned.

8. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages assessed U/s 14B.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 80% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer