



सत्यमेव जयते

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

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

(Wednesday the 12<sup>th</sup> day of January, 2022)

**APPEAL No.684/2019**

Appellant : M/s.Kerala Transporting Company  
YMCA Road  
Kozhikode - 673001

By Adv.C. Anil Kumar

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Eranjipalam P.O.  
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 12.10.2021 and this Industrial Tribunal-cum-Labour Court on 12.01.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KKD/1459/ENF-1(1)/Dam/2019-20/3117 dt.03.09.2019 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for delayed remittance of contribution for

the period from 02/2017 to 03/2019 (remittances made during the period from 01.05.2018 to 30.04.2019). The total damages assessed is Rs.20,68,822/-.

2. The appellant is a private limited company engaged in transportation business. For the past 3 years the business activities of the appellant establishment are on a low ebb. There was recession and business activities of large transportation business houses and the appellant establishment was running on huge loss for the past many years. The main reason for the down fall of business activities is the adverse business conditions, lack of requisite business and consequent financial crisis. The appellant was not in a position to pay salary to its employees on regular intervals due to the financial difficulties. Consequently the remittance of provident fund contribution was also delayed. There was no intentional or wilful defiance of orders passed under the provisions of the Act but the delay in payment of contribution was due to financial crisis only, which is beyond the control of the appellant. The respondent authority issued notice dt.27.06.2019. The appellant submitted a statement dt.16.08.2019 before the respondent. A true copy of the notice is produced and marked as **Annexure 1**. A true copy of the written statement dt.16.08.2019 is produced and marked as **Annexure 2**. An authorised representative attended the hearing. After ascertaining the period of delay in remittance of contribution, the respondent issued the impugned order without

adverting to the issues raised in Annexure 2 statement. The impugned order is produced and marked as **Annexure 3**. The impugned order does not disclose the method of calculation, percentage of damages levied etc. The respondent failed to distinguish between the interest which the member is loosing had the amount been not remitted in time. The respondent has imposed the damages in a mechanical way without narrating any extenuating circumstances. Sec 14B of the Act as it stand today is a completely penal provision. The Hon'ble Supreme Court of India in **M/s.Hindustan Steel Ltd Vs The State of Orissa**, AIR 1970 SC 253 held that failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Since Sec 14B is a penal provision the respondent authority could have examined whether there is any mensrea in belated remittance of contribution. The respondent authority ought to have noticed that there was delay in remittance only due to the fact that there was financial difficulties beyond the control of the appellant establishment.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The appellant failed to remit the contributions in time as required under the

provisions of the Act and Schemes. Therefore a notice dt.27.06.2019 was issued to the appellant to show cause why damages as envisages U/s 14B read with Para 32A of the EPF Scheme should not be levied having made belated remittances. A detailed statement showing the amount remitted, due date of payment, actual date of payment, the delay and proposed damages was also enclosed along with the notice. The appellant was also given an opportunity for personal hearing on 20.08.2019. A representative of the appellant attended the hearing and admitted the delay. The written statement filed by him was also taken on record. The financial difficulties pointed out by the appellant are only part of the business and the appellant cannot take the financial difficulties as a shelter for delayed remittance of provident fund contribution. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 the Hon'ble High Court of Kerala held that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not. The appellant was offered adequate opportunity to present their case. The appellant admitted the delay and pleaded financial difficulties as a ground for belated remittance of contribution. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, 2006 5 SCC 361 held that “ In our opinion the Tribunal has miserably failed to appreciate that by setting aside the order of the Adjudicating Officer the Tribunal was setting a serious wrong

precedent whereby every offender would take shelter of alleged hardships to violate the provisions of the Act. In our opinion mensrea is not an essential ingredient for contravention of the provisions of a civil Act”.

4. The appellant establishment delayed remittance of provident fund contribution for the period from 02/2017 to 03/2019. The respondent therefore issued notice U/s 14B of the Act read with para 32A of EPF Scheme directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pleaded financial difficulties as a reason for delayed remittance of contribution and pleaded that there is no mensrea in belated remittance of contribution. After taking into account the submissions made by the representative of the appellant and also the admission of delay, the respondent issued the impugned order.

5. In this appeal, the learned Counsel for the appellant challenged the order mainly on the ground of lack of mensrea in belated remittance of contribution. According to him, the delay in remittance of contribution was due to delay in payment of wages because of financial constraints of the appellant establishment during the relevant point of time. According to the learned

Counsel for the respondent, the appellant failed to produce any documents to substantiate the financial difficulties of the appellant establishment before the respondent. In this appeal also the appellant failed to produce any documents to show the financial constraints pleaded by the appellant. 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 U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 also held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 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 authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

6. The learned Counsel for the appellant also pointed out that there was no mensrea in belated remittance of contribution. The learned Counsel pointed out that there was delay in payment of wages and as such there was delay in remittance of contribution as well. According to the learned Counsel for the appellant, financial difficulties is a mitigating circumstances that is

required to be considered while deciding the quantum of damages. Learned Counsel for the respondent pointed out that 50% of the delayed contribution pertains to the employees' share of contribution deducted from the salary of the employees. Non payment of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405/406 of Indian Penal Code. The appellant therefore cannot plead that there was no intentional delay in remittance of contribution atleast to the extend of 50% of the total contribution. The Hon'ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs RPFC**, Civil Appeal no.2136/2012 after referring to its earlier decisions in **McLeod Russell India Ltd Vs RPFC**, (2014) 15 SCC 263 and **EPFO Vs The Management of RSL Textiles India (P) Ltd**, (2017) 3 SCC 110 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, the question whether mensrea is appealable in Sec 14B proceedings is finally settled.

7. The learned Counsel for the appellant also pointed out that the impugned order is a non speaking order without any application of mind. When an opportunity for personal hearing was given, it is for the appellant to raise all the issues before the respondent authority. In Annexure 2 representation it is seen that the appellant raised the ground of financial difficulties without any supporting evidence and the ground of mensrea citing various decisions of Hon'ble Supreme Court and also High Courts. The Hon'ble High Court of Punjab & Haryana considered the question of application of mind when the appellant failed to bring the issues to the notice of the respondent authority with supporting evidence. In **T.C.M. Woollen Mills Vs RPFC and another**, 1980 (57) FJR 222 the Hon'ble High Court held that “ Unless the objections and factual matters are present before the Commissioner, he cannot imagine the same and adjudicate thereon. When the objection raised are vague and devoid of necessary particulars, a finding that a plea is untenable would be sufficient compliance with the requirement of a reasoned order “. Considering the fact that the appellant raised the case of financial crisis without any supporting evidence and the case of mensrea which is no more relevant in an adjudication



of Sec 14B, it is not possible to state that the impugned order is a non speaking order issued by the respondent in a mechanical manner.

8. Considering the facts, circumstances and pleading in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer