



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 3rd day of March, 2022)

APPEAL Nos. 346/2018 & 360/2019

Appellant : Kerala State Horticultural Products
Development Corporation Limited,
Udayagiri , Poojappura P.O
Thiruvananthapuram - 695012.

By Adv. Rahul Surendran

Respondent : The Regional PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on 08/12/2021
through V.C and this Tribunal-cum-Labour Court on 03/03/2022
passed the following:

ORDER

Appeal No.346/2018 is filed against order No.
KR/TVM/12713/ Damages Cell / 2018-19 / 3301 dt. 30/07/2018
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 02/2016 to 12/2017. The total damages assessed is Rs. 42,97,878/-.

2. **Appeal No.360/2019** is filed against order No. KR /TVM / 12713 / Damages Cell / 2019-20 / 2047 dt. 17/07/2019 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 10/2014 to 12/2018. The total damages assessed is Rs. 11,95,616/-.

3. Since common issues are raised, both the appeals are heard together and disposed off by this common order.

4. The appellant is a fully owned Government Company under the Department of Agriculture, Government of Kerala. The appellant is engaged in the role of procurement, processing storage and marketing of horticultural products. The appellant establishment was running under loss for the past few years. In spite of the financial difficulties the appellant was regular in payment of its statutory dues. There was delay in remittance of contribution to provident fund. The respondent initiated action for assessment of damages for belated remittance of provident fund contribution. A representative of the appellant attended the hearing produced records and pointed out the financial constrains of the appellant establishment. The respondent authority

issued the impugned order ignoring the contentions of the appellant. The non application of mind by the respondent authority is writ large on the face of the impugned order. The respondent authority issued order No. KR / TVM / 12713 / Damages Cell/ 2018-19/3301 dt. 27/07/2018 wherein damages to the tune of Rs.42,97,878/- was imposed on the appellant for the belated remittance of contribution for the period from 02/2016 to 12/2017. The said order is being challenged before this Tribunal in appeal No.346/2018. Without taking into account the above assessment, the respondent authority issued another order assessing damages for the period from 10/2014 to 12/2018 assessing an amount of Rs.11,95,616/-. The appeals are to be set aside on this ground alone. The impugned order is non-speaking order. The appellant during the course of 14B proceedings raised the financial constraint with documentary proof which was not at all considered by the respondent authority while issuing the impugned orders. There was no dishonest or contumacious conduct on the part of the appellant in delayed remittance of contribution. The respondent authority failed to consider the law laid down by the Hon'ble High Courts and Supreme Courts. The Courts in various judgments decreed

that the facts of each case will have to be examined before deciding whether imposition of damages is warranted.

5. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution. The respondent authority initiated action for levy of damages U/s 14B of the Act. Detailed delay statements were forwarded to the appellant along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pointed out that the delay was due to the financial constrains of the appellant establishment, however did not deny or dispute the delay furnished in the delay statement provided to the appellant along with the summons. The appellant was given adequate opportunity before issuing the impugned orders. The averment of the appellant that appeal no. 346/2018 filed by the appellant against the order dt. 17/07/2009 is pending before this Tribunal is not denied. The appeal was filed against an earlier order levying damages U/s 14B of the Act. Filing of an appeal by same appellant, for different periods, before the Hon'ble Tribunal is not at all a valid ground to set aside the impugned order. 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 provisions of a civil Act .

6. There was delay in remittance of contribution by the appellant. The respondent therefore initiated action U/s 14B of the Act for assessing damages for belated remittance of contribution. The impugned order in Appeal No. 346/2018 was assessing damages for the period 02/2016 to 12/2017. The respondent authority assessed an amount of Rs.42,97,878/-. The impugned order in Appeal No. 360/2019 dt. 17/07/2019 was issued assessing damages for belated remittance of contribution for the period 10/2014 to 12/2018. The total damages is assessed is Rs.11,99,616/- In both the cases, the appellant took a stand that the delay in remittance was not intentional and the same was due to the financial constrains of the appellant establishment. The respondent authority issued the impugned orders assessing damages after taking into account the submissions made by the appellant.

7. In this appeals the learned Counsel for the appellant took a specific plea that there is a overlap in periods of assessment and there is a possibility of duplication of assessments. According to him the

impugned order in Appeal No. 346/2018 is for the delayed remittance of contribution for the period from 02/2016 to 12/2017. Whereas in the impugned order in Appeal No. 360/2019 is for the belated remittance of contribution for the period 10/2014 to 12/2018. When the matter was taken up for virtual hearing on 27/09/2021, the learned Counsel for the respondent was directed to take instructions from the respondent organization on this specific issue regarding the overlapping periods of assessment in the two orders as pointed out by the learned Counsel for the appellant. When the matter was taken up for final hearing on 08/12/2021, the learned Counsel for appellant could not clarify the issue of overlap raised on the previous date of hearing by the learned Counsel for the appellant. On a perusal of the written statement filed by the respondent authority it is seen that the respondent authority in the written statement also failed to clarify the specific ground taken by the learned Counsel for the appellant. The only response in the counter is that “The averment of the appellant that an Appeal No.346/2018 filed by the appellant against the impugned order dt.17/07/2019 is pending before the Hon'ble Tribunal is not denied. This appeal was filed against an earlier order levied U/s 14B of the Act. Filing an appeal by the same appellant for a different period

before this Hon'ble Tribunal is not at all a valid ground to set aside another impugned order served on the same establishment. The two orders are separate legal orders. It only shows that the appellant establishment is a chronic defaulter in payment of the statutory dues and has been mulched with damages in past also". It is quite possible that damages are levied for the same period in two separate orders when an establishment remits contribution in instalments. The production of the copy of the delay statements ought to have solved the dispute regarding the overlap in periods of assessment as claimed by the learned Counsel for the appellant. However in the absence of any clarification on the issue it is not possible to uphold the impugned orders in this appeals.

8. The learned Counsel for the appellant also raised the issue regarding financial constrains as a reason for belated remittance of contribution. The learned Counsel for the respondent pointed out that the documents produced will not support the claim of the appellant regarding financial constrains as the documents would clearly establish the fact that the appellant is paying salaries, wages, bonus, gratuity and allowance in time. He also pointed out that the share capital of the appellant establishment incurred over a period of time.

He further pointed out that the non-remittance of employees' share of contribution deducted from the salary would clearly establish that there was intentional delay in remittance of contribution, atleast to the extent of employees' share.

9. Since it is not possible to uphold that impugned orders in view of the earlier observations in this order, I am not inclined to offer any comment on the other points raised by the learned Counsel for the respondent at this stage of proceedings.

10. Considering the facts, circumstances, pleadings and evidences in these appeals and for the reasons stated above, I am not inclined to uphold the impugned orders in these appeals.

Hence the appeals are allowed, the impugned orders are set aside and the matter is remitted back to the respondent authority to re-examine the matter in the light of the observations made above and decide the matter after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer