



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 3rd day of May, 2021)

APPEAL No.237/2018

Appellant : M/s. Air Travels Enterprises India Limited
New Corporation Building,
Palayam,
Thiruvananthapuram - 695033.

By Adv. Ajith S Nair

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
18/03/2021 and this Tribunal-cum-Labour Court on
03/05/2021 passed the following:

O R D E R

Present appeal is filed from order No. KR/ TVM/ 10354/
Damages Cell / 2018-19 / 1999 dt. 04/06/2018. 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 01/2015 and 09/2016 to 11/2017. The total damages assessed is Rs. 5,28,095/-.

2. The appellant is an establishment incorporated under the provisions of Company's Act 1956. The appellant company is engaged in the field of Travel and Tourism Industry. The appellant company was facing acute financial crisis due to various reasons such as economic recession. The travel industry was not expanding upto the expectation of the appellant company. The appellant company was finding it difficult even to meet the day to day affairs during 2014-15. The salaries of the employee were also delayed. The appellant also failed to deduct the employees' share of contribution from the employees because of the delay in payment of wages. While so the respondent issued notice alleging delay in remittance of contribution. The respondent admitted the financial liability of the appellant establishment. Though the appellant failed to produce any documents to substantiate their claim of financial difficulties, having admitted the financial difficulties, the respondent ought to have reduced the damages. There is no finding that the delay was intentional and there is mensrea in belated remittance of

contribution. The appellant remitted the interest U/s 7Q which will take care of the liability of the interest of the employees.

3. The respondent denied the allegations in the appeal memorandum. There was delay in remittance of provident fund contribution for the period 01/2015 and 09/2015 to 11/2017. When there is delay in remittance of contribution the appellant is liable to pay damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice 24/02/2018 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement showing the due date, the actual date of remittance and the delay in remittance was forward to the appellant along with the notice. The appellant was also given an opportunity for personal hearing on 22/5/2018. A representative of the appellant attended the hearing and filed a written statement dt.19/05/2018. According to the appellant the delay in remittance of contribution was not intentional but due to financial difficulties faced by the appellant. The appellant did not raise any dispute regarding the delay statement and proposed damages. The respondent issued the impugned order after considering the written statement and order submissions made the representative of the appellant.

4. The only ground pleaded by the appellant in this appeal is financial difficulties for delayed remittance of contribution. On a perusal of the impugned order it is seen that the same ground as pleaded before the respondent authority also at the time of hearing. However there is a clear finding by the respondent authority, that “ No documents were filed to substantiate the financial difficulties to be suffered by the establishment. Neither is anything placed on record to show delay in payment of salary of the employees as claimed by the employer. ” Hence it is clear that the appellant failed to produce any document either to substantiate financial difficulties or to show that there was delay in payment of wages to its employees. In the absence of any evidence to support the claim of the appellant regarding the financial difficulties or regarding the plea of delayed payment of wages, it is not possible to consider the claim of 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 **SreeKamakshi 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 U/s 14B **if the appellant pleads and produces documents to substantiate the same.** In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) No.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. Having failed to establish the claims of financial difficulties and also the delayed payment of wages to its employees it is not possible to accept the claim of the appellant regarding financial difficulties and also delayed payment of wages to its employees.

5. According to the learned Counsel for the respondent the appellant failed to prove that there was delay in payment of wages to its employees. Hence it is to be taken that the appellant was paying wages to its employees in time. When the wages of the employees are paid, the employees' share of contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution is an offence U/s 405 & 406 of Indian Penal Code. Having committed the offense of breach of trust the appellant cannot plead that there was no mensrea in belated remittance of contribution by the

appellant. Even otherwise Paras 30 & 38 of EPF Scheme mandates that the employers shall remit both the shares of contribution in time irrespective of the fact whether the salary is paid in time or not. Since there is violation of the statutory obligation by the appellant establishment the claim of the appellant that there is no intentional delay or mensrea in belated payment of contribution cannot be accepted.

6. Considering all the facts, circumstances and pleadings in this appeal I am not inclined to interfere with the impugned Order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer