



सत्यमेव जयते

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

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

(Friday the 23rd day of April, 2021)

APPEAL No.320/2018

Appellant : M/s. Newman Central School
Mangadu,
Elamannoor P.O
Adoor,
Pathanamthitta – 691 524.

By Adv. C.M.Stephen

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
24/2/2021 and this Tribunal-cum-Labour Court on
23/4/2021 passed the following:

ORDER

Present appeal is filed from order No. KR / TVM /
16851 / PD / 2018-19 / 4541 dt. 17/08/2018 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 07/2016 to 06/2017. The total damages assessed is Rs. 1,86,410/-.

2. The appellant is a School registered under the Central Board of Secondary Education. It is covered under the provision of the Act w.e.f 01/09/2003. The appellant was regular in compliance. Ever since the accounts were computerized by the respondent organization, the appellant used to remit the contributions in time. There was some delay in remittance of contribution due to technical problems of the respondents system. While so the respondent issued a notice dt. 21/05/2018 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The annexure enclosed along with the notice was vague, incomplete and there was no specification with regard to the quantum of delay. The impugned order is arbitrary, non-speaking and without proper reasons.

3. The respondent filed counter/argument note denying the above allegations. The appellant delayed remittance of contribution for the period from 07/2016 to

06/2017. The delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt. 21/0/2018 was issued to the appellant to appear before the authority on 04/06/2018. A delay statement showing the due date of payment, the actual date of payment, the delay in remittance and the amount was communicated along with the notice. Though the appellant acknowledged the notice, there was no representation of the appellant on 04/06/2018. The enquiry was adjourned to 28/06/2018 and a representative of the appellant attended the hearing and sought time for verification of the delay statement. Hence the enquiry was adjourned to 26/07/2018 and the representative of the appellant admitted the delay in remitting the contributions. However submitted that the delay in remittance was not intentional, but due to financial difficulties faced by the appellant. However the appellant failed to produce any documents to substantiate their claim of financial difficulties. The EPF contribution which was not paid into the fund in time includes the employees' share of contribution that was deducted from the salary of the employees and illegally retained by the appellant for his own

purposes. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, Civil Appeal No 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provision of a civil Act. Penalty is attracted as soon as the contravention of statutory obligation as contemplated by the Act is established. Hence the intention of parties committing such violation becomes wholly irrelevant.

4. The claim of the appellant that the proceedings U/s 14B was conducted in violation of principles of natural justice is not correct. It is seen that the respondent has issued notice to the appellant U/s 14B directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The respondent also enclosed along with the notice, a delayed statement furnishing therein the details such as the due date of payment, actual date of remittance, the delay in remittance and the amount remitted by the appellant. The appellant was given an opportunity for personal hearing. Though the appellant acknowledged the summons there was no representation of the appellant in the

enquiry. The respondent provided a further opportunity and a representative attended the hearing. The representative wanted to verify the correctness of the delay statement and sought an adjournment which was provided by the respondent. On the next date of positing the representative of the appellant confirmed the delay and submitted that the delay in remittance of provident fund contribution was not intentional. Though the appellant claimed financial difficulties as a reason for delayed remittance, no evidence was seen produced in the enquiry. From the above it is clear that there was no violation of principles of natural justice while issuing the impugned order. Another issue raised by the appellant is with regard to financial difficulty. It is a settled legal position that when an employer is pleading financial difficulties as a reason for delayed remittance of contribution the same shall be supported by documentary evidence. 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 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a mitigating 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. Even in this appeal the appellant failed to produce any documents to substantiate the claim of financial difficulties and therefore the same cannot be accepted as a mitigating circumstances.

5. The appellant also pleaded that there was no intentional delay on the part of the appellant on belated remittance of contribution. The learned Counsel for the respondent on the other side pointed out that the appellant has no claim that the salary of the employees were not paid in time. When the salary of the employees are paid, the employees' share of contribution is deducted from the salary of

the employees. The appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from salary is an offence U/s 405 and 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution and was not intentional atleast to the extent of employees' share deducted from the salary of the employees.

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