



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer.  
(Wednesday the 05<sup>th</sup> day of May, 2021)

**APPEAL No.330/2018**

Appellant :: M/s. V.C Estate,  
Kallar,  
Vattiar P.O  
Idukki – 685 611

By Adv. S. Jamal

Respondent : The Assistant PF Commissioner  
EPFO, Thirunakkara,  
Kottayam - 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on  
15.03.2021 and this Tribunal-cum-Labour Court on  
05.05.2021 passed the following:

**ORDER**

Present appeal is filed from order No. KR / KTM /  
1942 / APFC / Penal Damage / 14B / 2018-19 / 1277 dt.  
31/07/2018 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 06/2014 to 02/2018 (ie., remittance of EPF dues between 15/06/2014 and 31/03/2018.) The total damages assessed is Rs. 68,738/-.

2. The appellant is cardamom estate and covered under the provisions of the Act. Appellant has taken all earnest efforts to remit contribution in time. Due to introduction of unique portal system in respondent department there was lot of confusion which resulted in delayed remittance of contribution. There was absolutely no malafied intention on the part of the appellant in making delayed payments. At relevant point of time the appellant has not deducted the employees' share of contribution from the salary of the employees. Without considering the actual reasons offered by the representative who appeared in the hearing on 26/07/2018, the respondent issued the impugned orders. In ***M/s Shanti Garments Vs RPFC***, 2003 (1) CLR 224 the Hon'ble High Court of Madras held that when the default is due to no apparent fault of the employer, the quantum of damages should be compensatory rather than penal

nature. The default in payment of contribution was not at all intentional .

3. The respondent filed counter denying the above allegations. There was delay in remittance of provident fund contribution for the period from 6/2014 to 2/2018. Hence the respondent issued notice to the appellant to show cause why damages U/s 14B of the Act should not recovered. A representative of the appellant attended the enquiry and submitted a written submission contending that the delay in remittance was due to technical problems. Though the appellant alleged technical issues for delayed remittance of contribution, no details regarding the technical problems were furnished by the appellant. When the respondent introduced electronic challan-cum-return (ECR) and also the unified portal, adequate training was imparted to all employees to handle the remittance. The appellant cannot therefore claim technical problems for delayed remittance of contribution. Further hundreds of establishments in the area adopted the new system without any problem and therefore the claim of the appellant that the delay occurred only

because of the technical reasons cannot be accepted. At the time of the introduction of the ECR system the respondent provided all technical assistance wherever technical issues were brought to the notice of the respondent. The Hon'ble High Court of Kerala in ***Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC***, 1982 LAB IC 1422 held that Para 38 of EPF Scheme obliges the employer to make the payment within 15 days of close of every month and Para 30 of the Scheme casts an obligation on the employer to pay both contribution payable by himself and on behalf of the employees by himself in the first instance. The failure of the appellant to produce any documentary evidence to establish the so called technical problems during the course of enquiry will establish the fact that the appellant deliberately delayed the remittance of contribution to his advantage. In ***Chairman, SEBI Vs Sriram Mutual Fund***, Civil Appeal No. 9523-95424/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. The only ground pleaded by the appellant was some technical problems due to which the appellant could not remit the contribution in time. According to the learned Counsel for the respondent when the respondent introduced a new system of ECR all the establishments were provided adequate technical guidance. Further wherever the establishments pointed out technical difficulties the respondent gave hands on training to the concerned persons. 100 of establishments in the locality remitted their contribution without any problem. If at all the appellant had any problem, he ought to have brought the same to the notice of the respondent. The appellant failed to produce any document to prove that the technical problems if any, was brought to the notice of the respondent. Further the appellant cannot plead technical issues for delayed remittance of contribution for more than 4 years. Even if there were technical issues it will be solved within few days or at the best within few weeks time. Further learned Counsel for the respondent also pointed out that the appellant has no case that the employees' share of contribution deducted from the salary of the employee is remitted in time. The non-payment of employees' share of contribution deducted from

the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code.

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

Hence the appeal is dismissed.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer