



सत्यमेव जयते

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

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

(Wednesday the 5<sup>th</sup> day of May, 2021)

**APPEAL Nos. 365/2019, 366/2019 & 367/2019**

Appellant : M/s Kerala State Textile Corporation Ltd  
T.C 9/2000-01, "Annapoorna",  
Kochar Road,  
Sasthamangalam  
Thiruvananthapuram – 695 010.

By Adv. P.U Shailajan

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kottayam - 686001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on  
25.03.2021 and this Tribunal-cum-Labour Court on  
05.05.2021 passed the following:

**ORDER**

**Appeal No. 365/2019** is filed from Order No.KR/  
KTM / 2919 / APFC / Penal Damages/14B/2018-2019/  
3475 dt. 06/02/2019 assessing damages U/s 14B of EPF &  
MP Act (hereinafter referred to as 'the Act') for belated  
remittance of contribution for the period from 01/2013 to

04/2016 (ie., remittance of EPF dues between 12/08/2014 and 31/03/2017). The total damages assessed is Rs. 30,00,435/-.

2. **Appeal No. 366/2019** is filed from order No.KR / KTM / 2919 / APFC / Penal Damages / 14B / 2018-2019/ 3477 dt.06/02/2019 assessing damages U/s 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 08/2002 to 05/2014 (remittance of EPF dues made during the period from 1/4/1996 to 31/1/2014). The total damages assessed is Rs.1,35,842/-.

3. **Appeal No. 367/2019** is filed from order No.KR / KTM / 2919 / APFC / Penal Damages / 14B / 2018-2019/ 3473 dt. 06/02/2019 assessing damages U/s 14B of EPF and MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 04/2014 to 09/2017 (remittance of EPF dues made during the period from 26/03/2017 and 31/03/2018). The total damages assessed is Rs.11,44,234/-.

4. Since common issues were raised, all the appeals were heard together and disposed by a common order.

5. The appellant is a public limited company, owned by government of Kerala and the main purpose is to set up and run textile mills in the state of Kerala. The appellant has got eight units and one of them is M/s Kottayam Textiles. Kottayam Textile is manufacturing and marketing yarn. The financial position of the appellant is very poor and the appellant establishment is finding it extremely in difficult to run day-to-day affairs of the establishment. For the last seven years the mill is running under heavy loss and the accumulated loss of the mill as on 31/03/2018 was Rs.42.99 Crores. Being a government organization the appellant is operating the mill under heavy financial constraints. The appellant establishment was under layoff from 30/09/2016 to 19/02/2017 due to the disconnection of electricity by State Electricity Board due to non-payment of electricity charges from December 2015 onwards. With substantial financial assistance of government of Kerala the appellant started functioning from 28/02/2017. Due to the financial problems as pointed out above the appellant could not remit the provident fund contribution in time for several years. The respondent therefore issued notice directing the appellant to show cause why damages and interest shall not

be levied on the appellant. Since the appellant was not in a position to remit the amount, the appellant establishment requested the authorities to grant installment facility to remit the same. The respondent is also aware of the financial condition of the appellant establishment and the appellant establishment is being run only due to the social commitment. Once the unit is closed it will affect the life of more than 200 employees presently working in the appellant establishment. The appellant filed a written statement before the respondent authority explaining the circumstances that lead to the delayed payment of contribution. On a perusal of the orders issued by the respondent assessing the damages and interest for various spells which are produced as Annexure A1 to A6 it can be seen that there is overlap in periods for which damages and interest were assessed. There is delay in claiming damages and interest which is barred by limitation. As already stated the appellant establishment is in a total loss of around 43 crores. The true copy of the un-audited Profit and Loss account for the year 2017-18 is produced and marked as Annexure A9. The true copy of the audited Profit and Loss account for the year 2016-17 is produced and marked as Annexure A10. The above

documents will clearly show that the appellant establishment was in real financial constraints during the relevant period of time. The delay in remittance of contribution was not due to any willful default but due to the financial constraints even prior to the year 2000. In ***EPFC Vs Sree Kamakshy Agencies Pvt Ltd***, The Hon'ble High Court of Kerala held that financial losses can be a reason for exercising discretion in reducing or waiving damages as per Sec 14B of the Act. In ***Assistant PF Commissioner Vs Management of RSL Textiles India Pvt Ltd***, 2017 KHC 6030 the Hon'ble Supreme Court of India held that presence or absence of mensrea or actus reus would be a determining factor in imposing damages U/s 14B of the Act.

6. The respondent filed counter denying the above allegations. The appellant claimed financial difficulties for delayed remittance of contribution but failed to substantiate the same by adducing documentary evidence. The claim of the appellant that there was lay off is not an adequate ground to be considered by the respondent authority while assessing damages. The Annexure 9 & 10 profit and loss account pertains to only financial years 2016-17 and 2017-18. The documents produced are also not complete and

are only selected pages which cannot be relied on for the purpose of deciding the liability. The appellant also failed to explain how the appellant suffered losses and whether the losses were due to factors beyond the appellant's control or were simply due to mismanagement. Self inflicted losses cannot be used to escape the natural consequences there from, including the liability to pay damages U/s 14B. In ***New Commercial Mill Company Ltd Vs Union of India and Others***, the Hon'ble High Court of Gujarat held that where the employer is a habitual defaulter in respect of payment under the EPF and MP Act, financial hardship or constraints is not sufficient to mitigate the damages. The allegation that there was overlap in wage months in the impugned orders imposing penal damages is not correct. The appellant has remitted the dues in part for certain wage months and for such part payments for the very same wage month penal damages have been levied by different orders and not for the same belated remittance. For example for the wage month 05/2014, the appellant remitted the contribution in part payments of Rs. 2508/- on 24/07/2014 and Rs. 1553/- on 08/06/2015, Rs.10780/- on 17/01/2015, Rs. 4702/- on 27/09/2016 and

Rs.2,90,326/- on 06/02/2015. The belated remittance of Rs. 2508/- on 24/07/2014 has been penalized by Annexure 1 Order as evidenced by the accompanying calculation sheet and the belated remittance of Rs.1553/- on 08/06/2015, Rs.10718/- on 17/01/2015 and Rs.4702/- on 27/09/2016, Rs.2,90,326/- on 06/02/2016 have been penalized under Annexure 2 order as evidenced by the calculation sheet. There was no overlap for wage months in different penalty orders and the averment to the contrary is misleading. A representative of the appellant attended the hearing and agreed with the calculation sheet. The question of overlapping was also raised at the time of enquiry and the same was clarified by the respondent authority in the proceedings. Copy of the enquiry proceedings dt.22/01/2018 is produced and marked as Exbt R1. The Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills Vs RPFC**, 1982 LAB IC 1422 held that Para 38 of EPF Scheme obliged the employer to make payment within 15 days of close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the member employed by him, in the first instance.

7. The order U/s 7Q of the Act is not appealable. It is also pointed out that there is no limitation for the assessment of damages and interest.

8. The appellant establishment delayed remittance of contribution for various spells and the respondent initiated action for levying damages and interest U/s 14B and 7Q of the Act. The appellant through its representative attended the hearing and pleaded that the delay in remittance was due to financial constraints of the appellant establishment. The appellant failed to produce any documents to substantiate their claim. Therefore the respondent did not consider the financial constrains of the appellant establishment. The appellant also raised a claim of overlap in periods of assessment in three impugned orders. The respondent explained with clarity that there is no overlap in periods. However due to the remittance made by the appellant for a particular month in different spells over a period of time the damages were assessed over different periods. As explained by the learned Counsel for the respondent there is no overlap as far as the assessment of



damages is concerned. It is seen from the impugned order that the appellant raised the issue regarding certain remittances made by the appellant. The respondent considered the claim of the appellant and prepared a revised statement incorporating the corrections pointed out by the appellant. It is seen from Exbt R1 proceedings that the representative of the appellant also admitted the correctness of the statement in all the proceedings.

9. The basic contention raised by the appellant for belated remittance of contribution is that of financial difficulties. According to learned Counsel for the respondent the appellant failed to produce any document before the respondent authority to substantiate the claim of financial difficulties. He also pointed out that the delay in remittance of contribution is for the period from 08/2000 and the documents now produced in this appeal are only for the period 2016-17 and 2017-18, which will not adequately explain the delay even in this appeal. The learned Counsel for the respondent further pointed out that the documents now produced are also incomplete and that the documents cannot be admitted in evidence to support the claim of the appellant establishment. Even if these documents are

admitted it will not in any way indicate the actual financial position of the appellant establishment. In ***Aluminium Corporation Vs Their Workmen***, 1964(4) SCR 429 the Hon'ble Supreme Court of India pointed out that mere statements in balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. The documents now produced as Annexure 9 & 10, the statements of profit and loss account for the years 2016-17 & 2017-18 would however is an indication that the appellant establishment was running under loss at least for the period from 2016 to 2018. As rightly pointed out by the learned Counsel for the respondent, absolutely no evidence regarding the financial position of the appellant establishment for the period from 2000 to 2016 is produced by the appellant. The learned Counsel for the respondent also pointed out that the appellant has no case that there was delay in payment of wages to employees. The documents produced by the appellant in this appeal also do not support any delayed payment of wages to its employees. When salary

or wages are paid to the employees the employees share of contribution is deducted from the salary of the employees. According to the learned Counsel for the respondent, even the employees share of contribution deducted from the salary of the employees is not remitted by the appellant in time. Non remittance of the employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the total contribution deducted from the salary of the employees.

10. The appellant also raised an issue of limitation in initiating the proceedings under 14B. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 682 held that the Act do not provide for any limitation and therefore the delay in initiating proceeding under 14B of the Act will not in any way affect the proceedings. In above case there was a delay of 14 years in initiating the S.14B proceedings. In M/s. ***K Street Lite Electric Corporation Vs RPFC***, 2001 AIR (SC) 1818 the Hon'ble Supreme Court reiterated their earlier position

that there is no bar of limitation as far as Sec 14B proceedings are concerned.

11. Taking into account the fact that the appellant establishment is a state government undertaking and is facing financial constraints they are entitled for some relief with regard to levy of damages.

12. Considering all the facts, circumstances and pleadings I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed as per the impugned order.

13. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be preferred against an order issued U/s 7Q of the Act. In **M/s ISD Engineering School Vs EPFO**, WP(C) No. 5640/2015(D)

and also in ***St. Mary's Convent School Vs APFC***, WP (C) No. 28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

Hence the appeals are partially allowed, the impugned orders are modified and the appellant is directed to remit 70% of damages assessed U/s 14B of the Act. The appeal against S.7(Q) orders are dismissed as not maintainable.

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