



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 07th day of April, 2022)

APPEAL No. 7/2020

Appellant

M/s. Kuduakarnam Estate,
Goldview Vyapar Pvt. Ltd
Peermade
Idukki – 685 531

By Adv. V.B. Hari Narayanan
Adv. Archana.U

Respondent

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 24/02/2022 and this Tribunal-cum-Labour Court on 07/04/2022 passed the following:

ORDER

Present appeal is filed from order No. KR / KTM / 396 / APFC / Penal Damage /14B / 2019-2020 /10383 dt. 10/12/2019 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 04/2006 to 09/2008 (remitted in between 24/07/2006 and 23/01/2009). The total damages assessed is Rs. 60,596/-.

2. The appellant is a division of Goldview Vyapaar Pvt Ltd. A company registered under the Companies Act, 1956 and engaged in plantation business. The appellant was regular in compliance. Due to financial difficulties there was delay in remittance of contribution for the period from 04/2006 to 09/2008. The respondent therefore initiated action for assessing damages U/s 14B of the Act vide notice dt. 24/10/2018. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed an objection dt.25/11/2019, a copy of which is produced and marked as Annexure1. The copy of the certificate dt. 01/01/2013 showing profit and loss of the establishment is produced and marked as Annexure 2. The Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013(3) KLT 790 held that levy of damages U/s 14B is not an automatic process and financial hardship is certainly a matter for consideration. Ignoring the contentions of the appellant the

respondent issued the impugned order, a copy of which is produced and marked as Annexure 3.

3. The Respondent filed counter denying the above allegations. Goldview Vyapaar Pvt Ltd is a Company registered under the Companies Act, 1956 and is having five estates. M/s Bethel Plantations Pvt. Ltd took over M/s Goldview Vyapaar Pvt. Ltd on 15/10/2011 and is presently holding the Company. The appellant is one such estate covered under the provisions of the Act. The appellant establishment is liable to remit contribution within 15 days of close of every month. There was delay in remittance of contribution. The respondent initiated action for assessing damages. A summons along with a detailed delay statement was forwarded to the appellant. The appellant was also given an opportunity for per hearing. A representative of the appellant attended the hearing, admitted the delay and filed a written statement, pleading that the delay in remittance of contribution was due to the financial constrains of the appellant establishment. The Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Vs RPFC**, 1982 (1) LLJ 440 (Ker) held that the establishments are required to remit both the contributions within 15 days of close of every

month as per Paras 30 & 38 of EPF Scheme irrespective of the fact whether wages are paid or not. **RPFC Vs Harrison's Malayalam Ltd** (Supra) was decided by the Hon'ble High Court of Kerala on a different set of facts and therefore is not applicable to the present case. In **Hindustan Times Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court held that financial difficulties cannot be a justifiable ground for the employer to escape the statutory liability. The Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 90020 LLT 416 SC held that “ Even if it is assumed that there was a loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time.” The appellant is a habitual and chronic defaulter. There are 6 instances where contributions assessed U/s 7A, damages assessed U/s 14B and interest demanded U/s 7Q were challenged before the Hon'ble High Court of Kerala. The Hon'ble High Court gave installment facility to remit the same. The appellant failed to comply with the directions of the Hon'ble High Court of Kerala by granting installment facility. The Hon'ble Supreme Court of India in **Organo Chemical Industries case**

(supra) has considered the default of a chronic defaulter and held that

“ There can be no doubt that the petitioners have been habitual defaulter in the matter of making contributions to the Employees’ Provident Fund, Family Pension Scheme and payment of administrative charges from the very inception. They have deliberately concealed the facts pertaining to earlier defaults and the attendant levy of damage U/s 14B of the Act. It would thus be manifest that the petitioners instead of making their contributions, deliberately made willful defaults on one pretext or another are have been utilizing the amounts deducts from the wages of their employees, including their own contributions, as well as administrative charges, in running their business. The Regional Provident Fund Commissioner, therefore, rightly observed that the petitioners having to regard to their past record must be visited with the maximum penalty”.

4. The appellant establishment defaulted in remittance of contribution. The respondent therefore initiated action for assessing damages U/s 14B of the Act read with Para 32A of EPF Scheme. A notice was issued to the appellant along with a detailed delay statement. A representative of the appellant attended the hearing and filed written statement stating that the delay in remittance was due to financial constraints of the appellant establishment. No documents to substantiate the claim was produced. The respondent authority therefore issued the impugned order.

5. In the present appeal the learned Counsel for the appellant pointed out that delay in remittance of contribution was due to the financial constraints of the appellant establishment. The learned Counsel for the respondent pointed out that the appellant failed to produce any documents to substantiate the financial difficulties of the appellant during the relevant point of time. In this appeal the appellant produced Annexure A2 certificate given by a Chartered Accountant showing the loss of the company as a whole from 2007-2008 to 2011-12. According to the learned Counsel for the respondent such a certificate will not satisfy the requirement of evidence to

substantiate the claim of financial difficulties. Even the balance sheet of the companies cannot be accepted unless the figure reflected therein are proved through proper evidence before the respondent authority. The Hon'ble Supreme Court of India in **Petland Turkey Red Dyeworks Company Ltd Vs Dyes and Chemical Workers Union and Others**, 1960 KHC 717 held that balance sheet of a company does not by itself prove any fact mentioned therein unless the figures in the balance sheet are proved by evidence through competent persons or through affidavit before the appropriate authority. Hence the certificate by the Chartered Accountant and that too for the company as a whole and not for the appellant, cannot be accepted as proof for the financial constraints of the appellant establishment. The learned Counsel for the respondent also pointed out that the appellant is a chronic defaulter and pointed out 6 instances wherein the appellant approached the Hon'ble High Court of Kerala and the Hon'ble High Court granted installment facility to clear the dues in instalments. However the appellant failed to comply with the directions and the huge amounts of contribution are still outstanding from the appellant establishment. The learned Counsel for the appellant relied on the decision of

Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Plantation (Supra)**. According to the learned Counsel for the respondent the facts of that case and the present case are entirely different and therefore the judgment in the above case cannot be made applicable to the present case. Further it is seen that the respondent organization challenged the decision of the Division Bench of High Court of Kerala in **Harrison Malayalam** case before the Hon'ble Supreme Court of India in SLP No. 21174/2015 and the Hon'ble Supreme Court while dismissing the appeal held that the question of law involved in that case is kept open to be decided in an appropriate case. The learned Counsel for the appellant argued there was no intentional delay and therefore there was no mensrea in belated remittance of contribution. The learned Counsel for the respondent pointed out that the appellant failed to remit even the employees' share of contribution which is deducted from the salary of the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405 & 406 of Indian Penal Code.

6. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act . In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation**, Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **McLeod Russel India Ltd Vs RPF**, 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd**, 2017 (3) SCC 110 held that

“ Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of India Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

7. Considering all the facts, circumstances and 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