



सत्यमेव जयते

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

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

(Wednesday the 19<sup>th</sup> day of January, 2022)

**Appeal No.15/2020**

Appellant : M/s. Ihits Technologies Pvt. Ltd.,  
Thapasya,  
Infopark , Kakkanad  
Kochi – 682 042.

By M/s. Ashok B. Shenoy

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kaloor, Kochi – 682017

By Adv. Sajeev Kumar K. Gopal

This case coming up for final hearing on 11/11/2021  
and this Tribunal-cum-Labour Court on 19/01/2022 passed the  
following:

**ORDER**

Present appeal is filed from order No.  
KR/KCH/1464005/PenalDamages/2019/5141 dt. 01/10/2019  
assessing damages U/s 14B of EPF & MP Act (hereinafter referred  
as ‘the Act’) for belated remittance of contribution for the period  
from 01/01/2016 to 31/03/2019. The total damages assessed is  
Rs. 7,39,000/-.

2. The appellant is a Private Limited Company which is covered under the provisions of the Act. In May 2019 the respondent issued summons dt.02/05/2019 proposing to levy damages for belated remittance of contribution from 01/2016 to 03/2019. A true copy of the summons is produced and marked as Annexure A1. The appellant was given an opportunity for personal hearing. Representative of the appellant attended the hearing and submitted a written statement explaining the reasons for delayed remittance of contribution. It was pointed out that being a start up, the appellant was going through grave financial difficulties in the initial years. The delay in remittance of contribution was not willful or deliberate. A copy of the written statement dt.17/05/2019 is produced and marked as Annexure A2. The respondent without considering the written statement passed a cryptic and non-speaking order imposing huge damages. A copy of the impugned order is produced and marked as Annexure A3. The impugned order is bad and ultravires in as much as the respondent is not an officer competent to issue an order U/s 14B of the Act. The respondent authority failed to consider the dictums laid down by the Hon'ble Supreme Court in 2017 (3) SCC 110, 2014(15) SCC 263 and 1979 (4) SCC 573. The respondent authority failed to adjudicate the question as to

whether the delay in payment of contribution is willful and deliberate. It is settled position that while determining the quantum of damages, the assessing authority shall make an objective consideration depending upon the facts and circumstances of each case. Sec 14B of the Act is purely punitive as it stands today and it is not correct to issue a non-speaking order assuming that for mere delay in payment of contribution damages can be levied. Going by Para 38 of the EPF Scheme contributions are payable only within 15 days of close of every month in which wages is paid and deduction towards the contribution is made. The wages to the employees for each month are being paid by the appellant in the succeeding month with deduction towards employees' contribution being made in the succeeding month only. Therefore the contribution are required to be paid from appellant's end only from 15<sup>th</sup> of the month following the month in which payments of wages is made. The respondent also failed to provide the 5 days grace period allowed as per the circulars dt. 19/03/1964 and 24/10/1973.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant is required to remit

contribution as per Sec 6 of the Act and Para 38 of EPF Scheme. The appellant failed to remit the contribution in time. The respondent therefore issued Annexure A1 summons providing an opportunity for personal hearing on 03/09/2019. A statement on monthwise delay and the proposed penalty was also sent across with the summons. A representative of the appellant attended the hearing. The delay was admitted by the representative. However the representative pleaded that the delay in payment was due to extreme financial crisis. No evidence was produced to substantiate the claim of financial difficulties. The appellant even failed to remit the employees' share of the contribution deducted from the salary of the employees. The impugned order is a speaking order complying with the principles of natural justice. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, AIR 1998 SC 688 held that bad financial condition is no defense for delayed deposit of provident fund contribution. The appellant could not prove that they were in continuous loss and was unable to pay the salaries on time. In the absence of any evidence the respondent authority rejected the contentions of financial difficulties as a reason for delayed remittance of contribution. The appellant admitted the delay while contending that the delay was not intentional. Ups

and downs in the business cannot be a valid ground for delayed remittance of contribution. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC held that “even if it is assumed that there was loss as claim, it will 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 appellant establishment over different points of time”. The so-called financial stress faced by the establishment is not proved through evidence. The financial crisis claimed by the appellant is not a defense to delay the contributions beyond the statutory limit. When the appellant delayed remittance of contribution and violated the provisions of the Act, the appellant cannot plead that there was no mensrea in belated remittance of contribution. The facts and circumstances leading to the belated payment of contribution was solely within the control of the appellant. Any decision to the contrary will prejudicially affect the interest of the employees giving the appellant a freehand to delay the statutory payments and misuse the monies including the component deducted from the employees' salary. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 5 SCC 361

held that mensrea is not an essential ingredient for contravention of provisions of civil Act .

4. The appellant establishment delayed remittance of provident fund contribution for the period from 01/2016 to 03/2019. The respondent therefore initiated action for assessing damages U/s 14B of the Act. A notice was issued to the appellant along with a detailed monthwise delay statement furnishing the delay in remittance and mode of calculation of damages. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and pleaded financial constrains are a reason for delayed remittance of contribution. The representative however admitted the delay as communicated to them through the delay statement. The appellant failed to produce any documents to substantiate their claim of financial difficulties. The respondent authority issued the impugned order after considering the submissions made by the representative of the appellant.

5. In this appeal, the learned Counsel for the appellant challenged the impugned order on the ground that the respondent authority failed to consider the grounds pleaded by the appellant and that the impugned order is a non-speaking

order. The learned Counsel for the respondent pointed out that the representative of the appellant who attended the hearing, admitted the delay and pleaded financial difficulties as a ground for delayed remittance of contribution. However the appellant failed to produce any documents to substantiate their claim of financial difficulties before the respondent authority. The appellant failed to produce any documents in this appeal also to substantiate their claim of financial difficulties. 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 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.

6. The learned Counsel for the appellant pointed out that the respondent authority ignored the various decisions of the Hon'ble Supreme Court as well as High Courts that there shall be a finding that there was intentional and deliberate delay while deciding the quantum of damages. The learned Counsel also pointed out that the Hon'ble Supreme Court in **Assistant PF Commissioner, EPFO and Another Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 held that mensrea is a relevant consideration while deciding the quantum of damages.

7. 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 RPFC**, 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”

8. The learned Counsel for the appellant pointed out that the respondent is not the competent authority U/s 14B of the Act to decide the damages. According to the learned Counsel for the respondent the powers U/s 14B is delegated to the respondent authority by the Central Government vide SO No.1553 dt.17/04/2002. The claim of the learned Counsel for the appellant that the appellant establishment is required to remit contribution only within 15 days of payment of wages is also opposed by the learned Counsel for the respondent. In **Organo Chemical Industries Vs Union of India**, 1979 2 LLJ 416 interpreting paragraph 38 of EPF Scheme the Hon'ble Supreme Court held that “ It further provides that the deposit of such contribution shall be made by the employer within 15 days of close of every month, ie, a contribution for a particular month has got to be deposited by the 15<sup>th</sup> days of the month following. A breach of any of these requirement is made a penal offence”. The

above decision of the Supreme Court is followed by the Hon'ble High Court of Kerala in **Jewel Homes Pvt. Ltd Vs Employees PF Organization**, WPC No. 25884/2011. The learned Counsel for the appellant also pointed out that the appellant establishment is not given the benefit of the grace period of 5 days while calculating the damages. The above circular is already withdrawn by the headquarters of EPFO. Even assuming that as per the circular the appellant was entitled to a grace period of 5 days, as the appellant had not admittedly remitted the contribution within the said period of 5 days, the appellant cannot escape the liability to pay damages on the expiry of the period of 15 days stipulated in paragraph 38 of the Scheme. This legal position was also clarified by the Hon'ble High Court of Kerala in the above referred case in the **Jewel Home Pvt. Ltd (Supra)**.

9. Considering 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