



सत्यमेव जयते

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

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

Thursday the 17th day of March, 2022)

APPEAL No.16/2020

Appellant

KAMB & M School of Life -
International,
Ayilakkad P.O, Edappal,
Malappuram – 679 576

By Adv K.K. Premalal
Adv Vishnu Jyothis Lal

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for final hearing on
10/02/2022 and this Tribunal-cum-Labour Court on
17/03/2022 passed the following:

ORDER

Present appeal is filed from Order No.KR / KK /
28271 / Enf-3(5) / Dam. / 2019-20 / 3838 dt. 22/10/2019
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 06/2015 to 07/2019. The total damages assessed is Rs.7,24,556/-.

2. The appellant was covered under the provisions of the Act. The appellant is an educational institution run by a charitable organization. The appellant received a notice from the respondent alleging that there was delay in remittance of contribution for the period from 06/2015 to 07/2019. A representative of the appellant attended the hearing and informed the respondent authority that the delay in remittance was due to the delay in accounting the demand draft for Rs.9,56,733/- for the period from June 2014 to March 2016. Though the ECR is uploaded by the appellant the amount is not credited to the account of the members. Further for the year 2016-2017 there was an excess expenditure over income of Rs.35,67,552/- and for the year 2017-2018 it was Rs.39,37,091/-. The respondent authority failed to exercise its discretion U/s 14B of the Act. In **Quilon District Automobiles Workers Co-operative Society Vs ESIC**, 2017 (2) KLT 21 the Hon'ble High Court held that the expression "may recover" would undoubtedly reveal the existence of legal discretion to consider even the question whether damages need be levied, in

a given circumstances. The delay of payment of contribution is for reasons beyond the control of the management. After introduction of Sec 7Q the compensatory part is taken out of Sec 14B. In **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790, the Division Bench of the Hon'ble High Court of Kerala held that after introduction of Sec 7Q the changes brought out in Sec 14B of the Act is required to be considered while levying damages. The Hon'ble Supreme Court of India in **Employees State Insurance Corporation Vs HMT Ltd and Another**, AIR 2008 SC 1322 and **Assistant PF Commissioner EPFO and another Vs Management of RSL Textiles (India) Pvt. Ltd**, 2017 (3) SCC 110 held that the existence of mensrea or actusreus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The appellant delayed remittance of contribution for the period 06/2015 to 07/2019 in violation of the provisions of the Act and EPF Scheme 1952. Hence a show cause notice was issued to the appellant providing an opportunity for personal hearing on 17/10/2019. A detailed

delay statement showing monthwise delay in remittance of contribution was also enclosed along with the notice. A representative of the appellant attended the hearing and requested for installment facility to remit the damages. The respondent authority issued the order assessing damages after hearing the representative of the appellant. The damages levied U/s 14B cannot be compared to the penalty clause available in the revenue legislations as the damages levied U/s 14B is going to augment the trust fund and not to general pool of the State as in the case of other penalties. The Hon'ble Supreme Court in **Organo Chemicals** case, 1979 (2) LLJ 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”. In **RPFC Vs SD College Hoshiarpur and other**, 1997 (1) LLN 520 the Hon'ble Supreme Court held that Commissioner has no power to waive penalty altogether. The Hon'ble Supreme Court of India **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of a civil

Act. Penalty is attracted as soon as contravention of statutory obligations as contemplated by the Act is established and therefore the intention of the parties committing such violation becomes immaterial.

4. The appellant establishment delayed remittance of contribution for the period 06/2016 to 07/2019. The respondent therefore initiated action for assessing damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent issued notice to the appellant along with a detailed statement of monthwise delay. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing admitted the delay and requested for installment facility to remit the damages. The respondent issued the impugned order after hearing the appellant.

5. In the present appeal the learned Counsel for the appellant pleaded that there was no mensrea in belated remittance of contribution and the delay in remittance was due to the financial constrains of the appellant establishment. The learned Counsel for the appellant argued that the appellant never pleaded the financial difficulties as a ground for delayed remittance of contribution, before the respondent authority. The

appellant also failed to produce any document to support their claim of financial difficulties before the respondent authority. Even in this appeal the appellant failed to produce any documents to substantiate the claim of financial difficulties.

6. 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.

7. The learned Counsel for the appellant also argued that in view of the decision of the Hon'ble Supreme Court in

Assistant Provident Fund Commissioner, EPFO and Another Vs Management of RSL Textiles (India) Pvt. Ltd (Supra) the existence of mensrea or actusreus to contravene a statutory provisions is a necessary ingredient while levying damages.

8. 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 actusreus is not an essential

ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

9. It is seen that the appellant has pleaded only for installment facility to remit the damages, before the respondent authority. The appellant failed to produce any documents to substantiate their claim of financial difficulties. Hence it is clear that the present appeal is filed only to delay the remittance of damages as per the impugned order.

10. 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