



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Friday the 1st day of January, 2021)

APPEAL No.165/2019

Appellant

M/s. Koliekanam Estate
Elappara,
Idukki – 685 501

By Adv. M/s. V.B Hari Narayan

Respondent

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

By Adv. Joy Thattil Itoop

This case coming up for final hearing on
10.12.2020 and this Tribunal-cum-Labour Court on
01.01.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/
KTM/ 67 / APFC/ Penal Damage / 14B /2018-19/3397
dt. 30/01/2019, 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 04/2015 to 05/2017 . The total damages assessed is Rs. 3,08,483/-.

2. The appellant is division of Bethel Plantations Pvt. Ltd, a company registered under Company's Act 1956. The appellant is engaged in plantation business. Though the appellant was regular in remitting contributions ever since it was taken over, there was some delay in remittance of contribution for the period from 2015 to 2017 due to steady losses incurred by the appellant group. The respondent issued notice dt. 14.12.2018 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant submitted a reply stating that the delay was not wilful and was on account of finance constraints and hardships faced by the appellant. The copies of Profit and Loss account statement for the years 2015, 2016 & 2017 are produced and marked as Annexure 1. It was further pointed out that in view of the decision of the Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Ltd**, 2013 (3) KLT 790 the levy of

damages is not an automatic process and financial hardship is certainly a matter of consideration while deciding the quantum of damages. Without considering the above pleadings the respondent issued the impugned order.

3. The respondent filed counter denying the above allegations. The appellant is a tea plantation. The appellant entered into a lease agreement with M/s. RBT Ltd group in the year 2011 valid till 2021 for managing the assets of the company. After purchasing the above estate the appellant started operations from 2011 onwards. The appellant defaulted in remittance of PF contribution. Hence a notice was issued to the appellant along with a delay statement to show cause why damages for belated remittance shall not be levied. The appellant claim financial difficulty relying upon Profit and Loss statements for the year 2014 to 2017. Self inflicted losses cannot be used to escape the natural consequences there from, including payment of penalty U/s14B. The appellant is liable to pay contribution within 15 days of close of every month under Para 38 of EPF Scheme. The

Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mill 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 this Scheme casts and obligation on the employer to pay both contribution payable by himself and on behalf of the employees by him in the first instance. The decision of the Hon'ble High Court of Kerala in **Harrisons Malayalam Ltd** (Supra) is not relevant to this case as the facts of the above case are entirely different from that of the present case. The Hon'ble Supreme Court in **Hindustan Times Ltd Vs Union of India**, AIR 1998 SC 688 held that the default on the part of the employer based on plea of financial problems cannot be a justifying ground for the employer to escape the liability U/s 14B of the Act. In **Organo Chemical Industries Vs Union of India** , 1979 LIC 1261 the Hon'ble Supreme Court held that even if it is assumed that there was loss as claimed it does not justify the delay in deposit of PF 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 Hon'ble High Court of Gujarat in **New Commercial Mill Company Ltd Vs Union of India**, held that where the employer is a habitual defaulter in respect of payments under the Act, financial hardship or constraints is not sufficient to mitigate the damages.

4. The only ground pleaded by the appellant for reduction or waiver of damages is that of financial difficulties. According to the learned Counsel for the respondent the appellant failed to produce any documents before the 14B authority to substantiate their claim of financial difficulties and therefore the factual findings by the respondent authority may not be interfered with. According to the learned Counsel for the appellant the profit and loss statements for the years ending 31/03/2015, 31/03/2016 and 31/03/2017 will substantially prove the financial difficulties of the appellant establishment. On perusal of these documents it is seen that it is a single page document from which the financial status of the appellant establishment cannot be

identified. The Hon'ble Supreme Court in **Aluminium Corporaion Vs Their Workmen**, 1963 (2) LLJ 629 SC held that the current assets and liabilities as reflected in Balance Sheet cannot be relied on unless the figures are proved by a competent person. In this particular case the documents produced will only show that the Bethel Plantations Pvt. Ltd, the parent company of the appellant was in loss during the relevant point of time. That by itself is not sufficient proof to prove that the appellant establishment was also running under loss. Atleast the appellant should have produced the complete Balance Sheet of the appellant establishment along with that of the parent company to understand the financial status of the appellant. The learned Counsel for the respondent pointed out that the appellant has no case that the salary of the employees were not paid in time. When the salary of the employees are paid the employee share of contribution which accounts for 50% of the total contribution is deducted from the salary of the employees. Non-remittance of the employee share of contribution deducted from the employees is an offence U/s 405 & 406

of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot rely on the decision of the Hon'ble Supreme Court of India in **APFC Vs The Management of RSL Textiles India Ltd**, Civil Appeal No. 96/97 of 2017 to argue that there was no mensrea in belated remittance of contribution. The only ground that can be considered in this appeal is that the parent company of the appellant was running under loss during the relevant point of time and therefore the appellant can be granted some relief with regard to levy of damages.

5. Considering all the facts, circumstances and pleadings and evidence in this appeal , I am inclined to hold that interest of justice will be met if the appellant is direct to remit 80% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is direct to remit 80% of the damages.

Sd/-

(V. Vijaya Kumar)
Presiding Officer