



सत्यमेव जयते

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

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

(Thursday the 22nd day of October, 2020)

APPEAL No.258/2019

Appellant : M/s. Priyadarshini Co-operative
Spinning Mills Ltds.,
No. INDHT(ST)3
Meenadom P.O
Kottayam – 686 516

By M/s. B.S Krishnan Associates

Respondent : The Regional PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 04.03.2020 and this Tribunal-cum-Labour Court on 22.10.2020 passed the following:

ORDER

Present appeal is filed from order No. KR/KTM/20244 /APFC/Penal Damage/14B/2018-19/3400 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 01/2015 to 10/2017. The total damages assessed is Rs. 2,09,488/-.

2. The appellant is a spinning mill in Co-operative Sector under the control of Government of Kerala. The chief source of income of the appellant is from the sale of yarn. The textile industry is facing severe financial crisis from the year 2011 onwards due to adverse business conditions. The day to day management is carried out from the financial support obtained from the Government. The appellant Mill has been incurring huge losses and loss as on 31/03/2015 is 7.79 crore, and as on 31/03/2016 is 6.95 crores and as on 31/3/2017 is Rs. 7.36 crores and as on 31/03/2018 the loss is 5.33 crores. The Balance Sheet and Profit and Loss account for the above periods are produced and marked as Annexure 01 to 04. The appellant establishment was covered under the provision of the Act and was regular in remittance of provident fund contribution. There was delay in remittance of provident fund contribution for the period from 01/2015 to 10/2017. The respondent issued a notice dt. 25/11/2018 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. An opportunity for personal hearing was also afforded on 29/11/2018. A representative of the appellant attended the hearing on 17/12/2018. He submitted a Written

Statement objecting to certain remittance reflected in the notice. A copy of the statement submitted by the appellant is produced and marked as Annexure 7. In view of the above the respondent revised the delay statement and offered another hearing on 17/01/2019. The appellant submitted before the respondent that the delay in payment of provident fund contribution was due to financial difficulties and there was no intentional delay or default to defeat the provisions of law. The appellant also produced copies of Balance Sheets from 31/03/2015 to 31/03/2018. Without considering the mitigating circumstance, the respondent issued impugned order. It is clear from the impugned order that the respondent has not considered any of the relevant facts and circumstances placed before him, leading to delay in remittance of contribution. There was no contumacious conduct on the part of the appellant. There was no mensrea on the part of the appellant. It has been clearly laid down by the Hon'ble Supreme Court in **ESI Corporation Vs HMT Ltd**, 2008 (1) KLT 814 and by the Hon'ble High Court of Kerala in **ESI Corporation Vs Premanandan**, 2007(2) KLT 666 and in **ESI Corporation Vs QUEGCOS** 2008 (3) KLT 333 that there must be mensrea on the part of the employer in committing delay in payment of

contribution so as to attract the damages by way of penalty. The appellant mill is already undergoing severe financial crisis and if the damages are also imposed that will aggravate the financial crisis of the appellant.

3. The respondent filed reply statement denying the above allegation in the appeal memorandum. Admittedly there was delay in remittance of provident fund contribution. When there is delay in remittance of provident fund contribution damages U/s 14B of the Act read with Para 32A of EPF Scheme are attracted. Hence a notice dt.15/11/2018 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution for the period from 01/2015 to 10/2017. The appellant was provided three opportunities to represent their case. A representative of the appellant attended the hearing and disputed the date of remittance for certain months. He also produced the bank statement in support of his claim. Hence a revised calculation sheet was prepared on the basis of the documents produced by the appellant and the same was sent along with the notice of enquiry on 17/01/2019. The appellant did not raise any objection regarding the revised delay statement. The Hon'ble Supreme Court of India in **Hindustan**

Times AIR 1998 SC 688 held that “ default on the part of the employer based on the plea of power cut, financial problems relating to other indebtedness or the delay in realisation of amount paid by cheques and drafts, cannot be justifiable grounds for the employer to escape liability”. The Hon’ble Supreme Court of India in **Organo Chemical’s** case observed that even if it is assumed that there was loss as explained, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be link with the financial position of the establishment at different points of time. Hence the financial constrains of establishment cannot be accepted as a valid reason for delayed provident fund remittance. In **Chairman SEBI Vs Sriram Mutual Fund**, Civil Appeal no. 9523-9524 of 2003 the Hon’ble Supreme Court held that mensrea is not an essential ingredient for the contravention of provision of Civil Law. In **Calicut Modern Spinning & Weaving Mills Vs RPF**, 1982 LAB IC 1422 the Hon’ble High Court of Kerala held that Para 38 of EPF Scheme obliged the employer to make the payment within 15 days of the close of every month and Para 30 of this scheme cast an obligation on the

employer to pay both contributions payable by himself and on behalf of the employee employed by him, in the first instance.

4. The grounds pleaded by the appellant are that of financial difficulties and lack of mensrea in belated remittance of contribution. The learned Counsel also relied on the audit certificate of the Co-operative department, Balance Sheets & Profit and Loss account for the years 2014-15 to 2017-18 to substantiate the claim of the financial difficulties of the appellant. On a perusal of the above documents it is clear that the appellant establishment was under heavy loss during the relevant point of time. The learned Counsel for the respondent pointed out that the loss as reflected in the Balance Sheet cannot be taken as an indication of the financial health of the appellant establishment as the documents also indicate that there are huge bank deposits made by the appellant during the relevant point of time. The learned Counsel for the respondent also argued that the Balance Sheet and Profit and Loss account cannot be relied on unless the same is proved through a competent person. The Hon'ble Supreme Court in **Aluminium Corporation Vs Their Workmen**, 1964(4) SCR 429 held that the mere statements in the Balance Sheets as regards current assets and current liabilities

cannot be taken as sacrosanct. The correctness of the figures as shown in Balance Sheets are to be established by proper evidence by those persons responsible for preparing the Balance Sheet. From the documents produced by the appellant it can be safely concluded that the appellant establishment was under severe financial strain during the relevant point of time. Further analysis of the figures reflected in the Balance Sheet is not possible in the absence of supporting evidence as held by the Hon'ble Supreme Court. Another ground pleaded by the learned Counsel for the appellant is that of mensrea. According to the learned Counsel the mere fact there was delay in remittance of contribution shall not be the only ground for assessing damages to the maximum. I agree with the argument of the learned Counsel for the appellant on that point. The learned Counsel of the respondent on the other side, pointed out that appellant even failed to remit the employees share of contribution deducted from the salary of the employee in time. Non remittance of employee's share of contribution, which amounts to 50 % of the total contribution, deducted from the salary of the employees is an offence under sec 405 & 406 of Indian Penal Code. The appellant cannot claim that delay in remittance of employee's share of

contribution which is deducted from the salary of the employees was not intentional. To that extend there is an element of mensrea in delayed remittance of contribution.

5. The appellant is a Mill in the co-operative sector under the control of Government of Kerala and is running under heavy loss. It is felt that the appellant deserves some leniency in quantification of damages for the relevant point of time. However social security schemes cannot survive under the contributions are received in time, invested in time and benefits are extended to the employees in time.

6. Considering the facts, pleadings and evidence and arguments in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of damages assessed as per Sec 14B of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed as per Sec 14B of the Act.

Sd/-

(V.Vijaya Kumar)
Presiding Officer