



सत्यमेव जयते

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

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

(Friday the 5th day of November, 2021)

APPEAL No.262/2018

(Old No.A/KL-41/ 2017)

Appellant : M/s. SRK Shelters Pvt. Limited,
501,502,Corporate Plaza,
Off Senapathi, Bapat Marg,
Shivaji Nagar,
Pune – 411 016.

By Adv. P. Ramakrishnan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017

By Adv. S. Prasanth

This case coming up for final hearing on
22/07/2021 and this Tribunal-cum-Labour Court on
05/11/2021 passed the following:

ORDER

Present appeal is filed from order No. KR / KCH / 21849 / Damages (VI) / 2016-17 / 16183 dt. 13/02/2017 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 03/2010 to 08/2012 .The total damages assessed is Rs.5,87,818/-.

2. The appellant is a company registered under Company's Act. It is covered under the provisions of the Act. The appellant launched various projects all over Kerala and has run into financial problem from year 2012 onwards. The appellant's business in the state of Kerala was completely wound up in the year 2013 and the company's office was closed down in March 2015. The delay in remittance of contribution was due to financial difficulties of the appellant only. Though the respondent refers to a show cause notice dt. 01/04/2014, no such notice was served on the appellant. The delay in remittance was

not wilful. True copies of the Balance Sheet of the appellant for the years 2010-2011, 2011-12, 2012-13 and are produced and marked as Annexure A2, A3 & A4 respectively. An order U/s 14B envisages a pre-decision hearing. The appellant was not provided an opportunity for hearing. In **Assistant PF Commissioner, EPFO and Others Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 the Apex Court held that in the absence of a finding regarding mensrea on the part of the employer, action U/s 14B cannot be sustained. The appellant establishment was facing acute financial crisis during the relevant period. In **Regional PF Commissioner Vs Harrisons Malayalam Ltd**, 2013 (3) KLT 790 the Division Bench of Kerala High Court held that financial difficulties are one of the mitigating circumstances that is required to be considered while quantifying the damages U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of

statutory contribution for the period 03/2010 to 08/2012. Any delay in remittance will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent issued notice dt. 01/04/2014 to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing on 02/05/2014. There was no representation for the appellant. The enquiry was adjourned to 03/06/2014 and to 20/08/2014. The adjournment notice was returned by the postal authorities. The Enforcement Officer got the change of address. Hence the notice of enquiry on 02/12/2014 was issued in the revised address. Shri. George K. Paul, Manager Shri. Mahesh K.L Accountant, attended the hearing on 02/12/2014, the appellant submitted a letter confirming the receipt of the summons and adjournment notices and requested for a further opportunity to present their case. The enquiry was therefore adjourned to 27/02/2015. There was no representation on the said date. The respondent authority therefore issued the impugned order taking into account the

written statement filed by the appellant. There was no dispute regarding date of remittance as reflected in the delay statement. Therefore the contention of the appellant that they were not issued any notice is not correct. The Hon'ble Supreme Court of India in **Hindustan Time Ltd Vs Union of India and Others**, 1998(2) SCC 242 held that financial problems cannot be a justifiable ground for the employer to escape the liability U/s 14B of the Act. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India** , 1979 (2) LLJ 416 held that the predominant objective of Sec 14B is to penalize, so that the employer may be thwarted and deterred from making any further defaults. In **Sky Machinery Ltd Vs Regional PF Commissioner**, 1998 LLR 9825 the Hon'ble High Court of Orissa held that financial crunch will not be a sufficient ground for waving damages for delay in depositing provident fund contributions. In **Chairman, SEBI Vs Sri Ram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea

is not an essential ingredient for contravention of the provisions of a civil Act.

4. During the course of hearing of the appeal, the learned Counsel for the appellant filed a memo producing therewith a copy of the judgment of the Hon'ble High Court of Mumbai in Company Petition No.974/2014 ordering the winding up of the appellant company U/s 433 (a) and (f) of Company's Act 1956, under the supervision of the Hon'ble Court. It was also ordered that the Official Liquidator of High Court of Bombay or some other fit person he appointed as liquidator of the Company assets, properties also income and also the business of the company.

5. The respondent authority initiated action against the appellant to levy damages for belated remittance of contribution for the period 03/2010 to 08/2012. There is no dispute regarding delay. The learned Counsel for the appellant pleaded that there was no notice to the appellant before the

impugned order is issued. However the learned Counsel for the respondent furnished the details regarding the action taken by the respondent to serve the summons. It is also pointed out that two representatives of the appellant attended the hearing and filed a written statement. The next ground taken by the appellant is financial difficulties. The appellant produced the extracts of two pages of balance sheet and profit and loss account for the period 2010-2011, 2011-2012 & 2012-2013 as Annexure A2 to A4 to substantiate the financial difficulties. The learned Counsel for the respondent submitted that the balance sheet figures cannot be taken an authority unless the figures reflected in the balance sheet are proved by some competent person before the respondent authority. It is seen that the Annexure A2 to A4 balance sheets are incomplete and cannot be taken as a basis for deciding the quantum of damages. However the liquidation order issued by the Hon'ble High Court of Mumbai in Company Petition No. 974/2014 clearly proves the financial difficulties of the appellant during

the relevant point of time. The learned Counsel for the respondent however pleaded that the appellant has no case that wages to the employees were not paid in time. When wages are paid, the employee' share of contribution are deducted from the salary of the employees. Non-remittance of employees' share of contribution deducted from salary of the employees is an offence of breach of trust. Having committed the offence of breach of trust, the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the contribution deducted from the salary of the employees.

6. From the available evidence, it can be seen that the appellant establishment was in real financial constraint during the relevant point of time and therefore deserves some accommodation with regard to the levy of damages U/s. 14B of the Act.

7. Considering the facts, circumstance and pleadings in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 60 % of the damages.

Hence the appeal is partially allowed the impugned order is modified and the appellant is direct to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer