



सत्यमेव जयते

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

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

(Wednesday the 05th day of January, 2022)

APPEAL No.305/2019

Appellant

The Kerala Ceramics Ltd.,
Clay & Mineral Division
Kanjiracode, Kundara,
Kollam - 691 501.

By M/s. Menon & Pai

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on 29/09/2021 and this Tribunal-cum-Labour Court on 05/01/2022 passed the following:

ORDER

Present appeal is filed from Order No. KR / KLM / 654 / PD/ 2018-19 /648 dt. 11/07/2019 assessing damages U/s 14 B of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) for belated remittance of contribution for the period from 12/2012 to 07/2017. The total damages assessed is Rs. 24,08,314/-.

2. The appellant is a Kerala Government undertaking engaged in refining and processing China Clay. The appellant is covered under the provisions of the Act. The appellant establishment has been running under loss from 1963. The accumulated loss of the appellant crossed 90.27 crores. The true copies of the balance sheets of the appellant for the years ending 01/04/2012 to 31/03/2018 are produced and marked as Annexure A1 series. Due to financial crisis, there was delay in payment of salary to its employees. To meet the operational expenses the appellant had to find resources and therefore there was delay in payment of provident fund contribution. The respondent initiated the process for assessing damages vide notice dt.07/06/2018. A representative of the appellant attended the hearing and filed a written statement apart from oral submissions. A true copy of the written submission dt.02/07/2019 is produced and marked as Annexure A2. Without considering the contentions of the appellant, the respondent issued the impugned order which is produced and marked as Annexure A3. The respondent authority failed to exercise its discretion available as per Sec 14B of the Act as well as Para 32A of EPF Scheme. In **RPFC Vs SD College, Hoshiarpur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce

the percentage of damages. The Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013, (3) KLT 790 held that the respondent authorities have to exercise discretion while looking at mitigating circumstances which includes financial difficulties of the appellant establishment. The Hon'ble High Court also 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. The Hon'ble Supreme Court of India in **Mcleod Russel India Ltd Vs RPFC**, AIR 2015 SC 2573 and **Assistant PF Commissioner EPFO and another Vs Management of RSL Textiles India Pvt Ltd**, 2017 (3) SCC 110 held that the presence of mensrea or actusreus would be a determinative factor in imposing damages U/s 14B as also the quantum thereof.

3. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution for the provident fund from 12/2012 to 07/2017. The respondent therefore issued a notice dt. 07/06/2018 directing the appellant to show cause why damages U/s 14B shall not be remitted. A detailed statement showing the amount paid, the date of remittance, the due date of payment, and the delay, monthwise was also forwarded to the appellant. During the course of the

proceedings it was noticed that the appellant made some bulk remittances and accordingly the delay statement was revised and handed over to the representative of the appellant on 04/09/2018. The enquiry was adjourned to various dates on the request of the appellant. The appellant submitted a letter dt. 02/07/2019 stating that the appellant establishment is facing huge financial loss and requested for waiver of interest and damages. The appellant also produced the profit and loss account for the year 2015-16, 2016-2017 and 2017-2018 to prove the financial difficulties of the appellant establishment. The recurring losses or financial stringency cannot be a ground for non-payment of statutory amount in due time. In **Elsons Cotton Mills Vs RPFC**, 2001(1) SCT 1104 (P&H) (DB) the Division Bench of Punjab & Haryana High Court held that the financial stringency or poor financial capacity is not a ground for not paying provident fund of employees in time. The Hon'ble High Court of Madhya Pradesh in **Steel Tubes India Ltd Vs APFC**, 2012 (3) LLJ 603 held that there is no provision whereunder the explanation for delay of payment of amount, due to financial difficulties as offered by the establishment, can be a ground to reduce penalty. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 held that financial

problems is not a relevant explanation to avoid the liability for payment of dues.

4. There is no dispute regarding the fact that there was delay in remittance of provident fund contribution during relevant point of time. According to the learned Counsel for the appellant, the appellant establishment is a chronic defaulter in terms of remittance of contribution, even the contribution deducted from the salary of the employees. According to the learned Counsel for the appellant the delay in remittance was due to delay in payment of salary due to the financial difficulties of the appellant establishment. The learned Counsel for the respondent contended that financial difficulties of the appellant establishment cannot be a valid ground for delayed remittance of contribution and consequent assessment of damages and interest. The learned Counsel for the appellant relied on the financial statements of the appellant establishment from 2012-13 to 2017-2018 to prove that the appellant establishment was facing real financial difficulties during the relevant point of time. For the year ending 2012-2013 the current assets of the appellant establishment was Rs.5.61 crores and the revenue income was Rs.2.43 crores. For the year ending 2014 the current asset was Rs.1.28 crores and the revenue income was Rs.2.08 crores. For the

year ending 31/03/2015 the current assets were Rs.10.57 crores and the revenue income was Rs.3.28 crores. For the year ending 31/03/2016 the current assets were Rs.9.18 crores and the revenue income was Rs.2.18 crores. For the year ending 31/03/2017 the current assets were Rs.7.65 crores and revenue income was Rs.2.94 crores. For the year ending 31/03/2018 the current assets were Rs.16.69 crores and the revenue income was Rs.4.30 crores. The cash and cash equivalent during the relevant period was Rs.36.56 lakhs in 2013, Rs.8.58 crores in 2014, Rs.6.52 crores in 2015, Rs. 4.35 crores in 2016, Rs. 2.49 crores in 2017 and Rs.9.28 crores in 2018. Similarly the employee benefit expenses was Rs.2.89 crores in 2013, Rs.2.86 crores in 2014, Rs.3.09 crores in 2015, Rs.2.85 crores in 2016, Rs. 3.0 crores in 2017 and 3.26 crores in 2018. An establishment having financial transactions to this extent cannot plead that financial difficulties is the exclusive reason for not remitting the provisions fund contribution in time. The learned Counsel for the respondent pointed out that the two page extracts of the annual report and financial statements produced by the appellant may not be relied on to decide the quantum of damages as these documents and the financial statement are not properly proved by a competent person before the respondent authority. The learned Counsel for the respondent also pointed out that the

appellant has no explanation what so ever for the non-remittance of employees' share of contribution deducted from the salary of the employees which is an offense U/s 405 & 406 of Indian Penal Code. The learned Counsel for the appellant also argued that there was no mensrea in belated remittance of contribution as the delay was only due to the financial constraints of the appellant establishment. 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” .

5. The appellant is a state government undertaking. From the financial statements produced by the appellant it is seen that the appellant establishment was suffering heavy loss during the relevant point of time. The loss of appellant establishment during the year ending 2012 was Rs. 4.0 crores and for the year ending 2013 it was 4.8 crores and for the year ending 2014 the loss was Rs.6.2 crores and for the year ending 2015 the loss was Rs.7.32 crores, for the year ending 31/03/2016 the loss was Rs.6.2 crores, for the year ending 31/03/2017 the loss was Rs.7.08 crores and for the year ending 31/03/2018 the loss was Rs.8.85 crores. Though the learned Counsel for the respondent vehemently opposed accepting these figures as loss, I am of the considered view that the appellant establishment deserves some consideration with regard to levy of damages considering the financial status as explained above.

6. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be

met if the appellant is directed to remit 80% of the damages assessed U/s 14B of the Act.

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

Sd/-

(V. Vijaya Kumar)
Presiding Officer