



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 11<sup>th</sup> day of April, 2022)

**APPEAL No.34/2021**  
(Old No. ATA. 673(7) 2009)

Appellant : The Kerala State Cashew Development  
Corporation Ltd.,  
Cashew House, PB No. 13,  
Kollam – 691 001.

By Adv. L.S. Sunil

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  
09/03/2022 and this Tribunal-cum-Labour Court on  
11/04/2022 passed the following:

**ORDER**

Present appeal is filed from Order No. KR/KLM/1179/  
PD/2009/7397 dt. 03/08/2009 assessing damages U/s 14B of

EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period 03/2007 to 10/2007. The total damages assessed is Rs.27,301/-.

2. The appellant is a fully owned Government of Kerala company and engaged in running cashew factories all over Kerala. During the years 1999-2000 and 2001-2002 the appellant establishment suffered severe setback in business activities due to unprecedented price fluctuations in the international market causing heavy losses. The heavy losses continued during subsequent years also. During the year 1999-2000 and 2000-2001 the net loss of the appellant was Rs.3,713.53 lakhs and Rs.8371.51 lakhs respectively. The net loss during the year 2000-01 and 2002 ~2003 were Rs.3995.24 lakhs and Rs.1427.47 lakhs respectively. The accumulated loss of the appellant as on March 2006 to March 2007 and March 2008 were Rs. 52654.22 lakhs, Rs.65943.37 lakhs and Rs.57,997.99 lakhs respectively. The paid up share capital of the appellant is only Rs.1,16,79,01,500/-. Hence the accumulated loss of appellant establishment is far above its paid up share capital. Due to financial constraints the appellant was forced to close down the factories from May 2001 to August 2003. The factories

restarted only in December 2004. Due to the above financial difficulties there was some delay in remittance of contribution for the period from 03/2007 to 10/2007. The respondent issued notice dt. 29/06/2009 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A copy of the notice is produced and marked as Annexure A1. The appellant submitted its written objection on 09/07/2009 before the respondent. A true copy of the written objection is produced and marked as Annexure A2. A representative of the appellant attended the hearing and pleaded the financial difficulties. Ignoring the contentions of the appellant the respondent issued the impugned order. The respondents failed to exercise its discretion available U/s 14B of the Act taking into account the mitigating circumstance pleaded before him. The respondent authority ought to have considered the fact that delay in remittance of contribution was not intentional. The delay occurred due to the reasons beyond the control of the appellant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act with effect from 30/09/1962. The

appellant delayed remittance of contribution during 03/2007 to 10/2007. The respondent therefore issued a notice dt.29/06/2009 directing the appellant to show cause why damages shall not be levied. A copy of the notice is produced and marked as Exbt.R1. A representative of the appellant attended the hearing on 14/07/2009 and filed an objection dt.09/07/2009. According to the representative the delay in remittance was not willful or intentional and the delay was due to the financial constraints of the appellant establishment. The appellant failed to establish the financial constraints pleaded before the respondent authority. The financial difficulties pleaded by the appellant is not specific to the appellant establishment alone. Recurring loss or financial stringency cannot be a ground for delayed remittance of contribution. In **M/s. Sky Machinery Vs RPFC**, 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waving penal damages for delay in deposit of provident fund contribution. The Hon'ble Supreme Court of India in **Hindustan Times Vs Union of India**, 1998 (2) SCC 242 held that financial difficulties is not a relevant explanation to delay the remittance of contribution. In **Eltons Cotton Mills Vs RPFC**, 2001 (1) SCT 1104 (P&H) (DB), the Division Bench of the Hon'ble

High Court of Punjab and Haryana rejected financial stringency as ground for delayed remittance of contribution. Sec 14B was inserted in the Act with an object to Act as a deterrent measure on employers, to prevent them from not carrying out their statutory obligations to make payments to provident fund.

4. The appellant establishment delayed remittance of contribution for the period 03/2007 to 10/2007. The respondent therefore initiated action for assessing damages U/s 14B. A notice along with a detailed monthwise delay statement was forward to the appellant establishment. The representative of the appellant attended the hearing and filed a written statement pleading financial difficulties. No documents to substantiate the financial difficulties was produced before the respondent authority. The respondent therefore issued the impugned order rejecting the contentions of the appellant.

5. In this appeal also the learned Counsel for the appellant reiterated its position taken before the respondent authority during Sec 14B proceedings. According to the learned Counsel the delay in remittance of contribution during the relevant period was only due to the financial constraints of the appellant

establishment, which started during 2000-2001 because of the crisis due to the fluctuations in prices of cashew in the international market. The learned Counsel for the respondent however pointed out that no documents were produced before the respondent authority to substantiate the case of the appellant that they were facing financial difficulties during the relevant point of time. The appellant produced one page extract of provisional balance sheet as on 31/03/2007 and 31/03/2008 in this appeal. The learned Counsel for the respondent pointed out that even the final balance sheet cannot be accepted as proof of financial difficulties unless the figures reflected therein are proved through a competent authority before the respondent authority. The Hon'ble Supreme Court of India in **Petlab Turkey Red Dye Works Company Ltd Vs Dyes and Chemical Workers Union and Other**, 1960 KHC 717 held that balance sheet does not by itself prove the financial status unless the employers by evidence prove the correctness of the figures before the lower Court or the competent authority. However the loss as per the provisional balance sheet as on 31/03/2007 is shown as Rs.65,943.37 lakhs and for the year ending 31/03/2008 it was Rs. 57,997.99 lakhs. Though this one page extracts cannot be

accepted as an evidence to prove the financial constraints, it will definitely prove that the appellant establishment was running under loss during the relevant point of time.

6. The learned Counsel for the appellant also pleaded that there was no intentional delay in remittance of contribution. The learned Counsel for the respondent pointed out that the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense of breach of trust 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.

7. 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”

8. The appellant establishment is a government of Kerala undertaking. Though the appellant failed to prove the financial constraints by producing the relevant documents, the documents produced by the appellant would indicate that the appellant establishment is running under heavy loss during the relevant point of time. The appellant is therefore entitled for some relief as far as damages U/s 14B is concerned.



9. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70 % 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 70% of the damages.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer