



सत्यमेव जयते

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

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

(Friday the 23rd day of April, 2021)

APPEAL No.374/2019

Appellant

M/s. Veekay Tea Company (P) Ltd
Chandramalai Estates,
Nelliyampathi. P.O
Palakkad District
Pin – 678 508

By Adv. N. Reghuraj

Respondent

The Assistant PF Commissioner
EPFO, Sub-Regional Office
Eranhipalam P.O
Kozhikode-673 006.

By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on 22/03/2020
and this Tribunal-cum-Labour Court on 23/04/2021
passed the following:

O R D E R

Present appeal is filed from Order No. KR/KKD/405/
Enf- 4 (1) / 2019/ 2497 dt. 24/7/2019 assessing damages U/s
14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act')
for belated remittance of contribution for the period 07/2014 to

10/2014 & 8/2016 to 02/2019. The total damages assessed is Rs. 26,27,356/-.

2. The appellant is a private limited company engaged in the manufacture of tea and owns a tea estate. Initially the appellant establishment was running on profit. However due to drastic drop in price of tea appellant started accumulating huge loss. The sudden changes in climatic conditions and increase in labour charges also contributed to the loss. Numerous landslides occurred in various parts of the tea estate resulted in 10 hectare of tea estate and 75000 tea bushes being washed away. That apart, the labour lanes, muster room, and supervisor cottages were badly damaged in the rains. The appellant approached the State Government seeking financial assistance to tide over the situation. A true photocopy of the said representation dt. 06/09/2018 is produced and marked as Annexure A1. No financial assistance is received from the Government so far. The true copies of the profit and loss account and balance sheet of the appellant company for the years 2014-15 to 2018-19 is produced and marked as Annexure A3, Annexure A3A, A3B, A3C & A3D respectively. The loss accrued from 2014-15 to 2018-19 is exponentially very high. Due to the

financial difficulties there was delay in remittance of provident fund contribution. The respondent issued notice dt. 09/05/2019 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. The copy of notice is produced and marked as Annexure A4. Alongwith the notice the respondent also provided a detailed delay statement. A representative of the appellant attended the hearing on 02/07/2019 and appraised him on the financial situation of the appellant establishment. It was pointed out to the respondent authority that the delay in remitting the dues was neither deliberate nor intentional but on account of total lack of funds. Without considering the request of the appellant the respondent issued the impugned order. The Hon'ble High Court of Kerala held in various judgments that financial constrains beyond ones control can be a mitigating circumstance for reducing or waiving damages. The respondent failed to exercise the discretion available to him U/s 14B of the Act and Para 32A of EPF scheme. In **RPFC Vs SD College Hoshirpur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty all together, he has the discretion to reduce the percentage of

damages. The Division Bench of Kerala High Court in **RPFC Vs Harrison Malayalam Ltd**, 2013 (3) KLT 790 held that the respondent authority has to exercise discretion while looking at mitigating circumstances which includes financial difficulties projected by the employer and the quantum to be imposed has to be decided on an overall consideration of the facts and circumstance. The Hon'ble High Court also held that the existence of mensrea and actus reus to contravene statutory provision must also be held to be a necessary for levy of damages and/or the quantum thereof. In **Mcleod Russel India Vs RPFC**, AIR 2015 SC 2573 the Hon'ble Supreme Court held that the presence of mensrea or actusreus would be a determinative factor while imposing damages U/s 14B as also the quantum thereof, since it is not inflexible that 100% arrears has to be imposed in all cases. The Hon'ble Supreme Court of India restated the above principle in **Assistant PF Commissioner Vs the Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110. Since 1998 the plantation industry in south India has been experiencing severe financial crisis. By 2018-19 the loss of the appellant company has almost doubled. The situation is verse because of the havoc caused by last year monsoon.

3. Respondent filed counter denying the above allegations. The appellant is covered under the provision of the Act. The appellant delayed remittance of provident fund contribution. When there is delay in payment of contribution, damages U/s 14B read with Para 32A of EPF Scheme is attracted. Hence a notice dt. 09/05/2019 was issued to the appellant to show cause why damages U/s 14B shall not be levied on the appellant. A detailed delay statement was also forwarded along with the notice. A representative of the appellant attended the hearing and pleaded that the remittance was delayed due to financial difficulties. On verification of the records it is established beyond reasonable doubt that appellant delayed remittance of provident fund contribution. The delay as per the statement annexed alongwith the summons was also accepted by the representative of the appellant. In ***Calicut Spinning and Weaving Mills Ltd***, 1982 KLT 303 the Division Bench of the Hon'ble High Court of Kerala held that the employer is bound to pay contribution under the Act every month irrespective of the fact that wages have been paid or not. The respondent followed the principles of natural justice in letter and spirit while issuing the impugned order. The decision of the

Hon'ble Supreme Court in ***SD College case*** (supra) was prior to the amendment of the Act on 01/01/1991 when the respondent authority had discretion to levy damages depending on the factual situation. The Hon'ble Supreme Court of India in ***Chairman, SEBI Vs Sriram Mutual Fund***, Civil Appeal No. 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of the provision of a Civil Act. The penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intentions of parties committing such violation become immaterial. In other words the breach of civil obligation will attract penalty under the provisions irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not.

4. The appellant is an establishment covered under the provisions of the Act. Admittedly there was delay in remittance of provident fund contribution during relevant point of time. According to the learned Counsel for the appellant the delay was because of the financial constraints of the appellant establishment during the relevant point of time. According to him the plantation industry was facing a lot of financial crisis

from 2009 onwards at the frequent rain havoc has added to the problem of the appellant establishment. The establishment produced Annexure A1 letter address to the Hon'ble Minister for Revenue informing them of the loss occurred to them during the floods in 2018. Though the appellant requested for some compensation, the Government so far has not paid any compensation to the appellant. The appellant produced Balance Sheet and Profit and Loss account of the appellant establishment for the period from 2014-15 to 2018-19 to substantiate their claim of financial difficulties. It is seen from the documents now produced that in the year 2014-15 the revenue income of the appellant establishment was 4.64 crores and the employee benefit expense was Rs.1.20 crores. During the year 2015-16 the total revenue income was Rs.3.35 crores and employee benefit expense was Rs.1.04 crores. For the year 2015-16 the revenue income was Rs.3.34 crores and employee benefit expense was around 1.05 crores. For the year 2016-17 the total revenue income was Rs.3.97 crores and employee benefit expense was around Rs.1.56 crores. For the year ending 31/03/2017 the total revenue was Rs.3.93 crores and the employee benefit expenses was around 1.56 crores. For the year

31/03/2018 the revenue income was Rs. 4.16 crores and the employee benefit expense was Rs. 1.44 crores. As per the provisional balance sheet for the total revenue income was Rs. 4.11 crores and employee benefit expense was Rs. 1.72 crores. For a company with so much revenue income and spending so much on employee benefit, it is rather difficult to believe the contention of the learned Counsel for the appellant that the loss as projected in the books of accounts was the only ground for delayed remittance of provident fund contribution. It is however true that the loss of the appellant company increased from Rs. 80 lakh in 2014-15, Rs. 1.16 cores in 2015-16, Rs. 1.46 crores in 2016-17 and Rs. 1.98 crores in 2017-18 and there will be a projected loss of Rs. 3.40 crores in 2018-19. The appellant pleaded the financial difficulties before the respondent authority U/s 14B of the Act. However the appellant establishment failed to substantiate the claim of financial difficulties before the authority U/s 14B. The learned Counsel for the Respondent further argued that the figures reflected in balance sheet & profit and loss account of a company cannot be accepted in a proceedings U/s 14B or in this appeal unless the same is proved through a competent person. In ***Aluminium***

Corporation Vs Their Workman, 1964(4) SCR 429 the Hon'ble Supreme Court of India held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The correctness of figures as shown in the balance sheet itself are to be established by proper evidence in court by those responsible for preparing the balance sheet or by a competent witness. As already pointed out the documents now produced by the appellant only prove the total loss during the relevant period but would not substantiate the claim of the appellant that the delay in remittance of provident fund contribution was only due these financial difficulties. The Annexure A4 delay statement send by the respondent to the appellant alongwith the summons for 14B enquiry would disclose that the delay in remittance of contribution is substantial. Many times it is more than 2 years. Hence the financial difficulties as disclosed by the appellant now will not justify the delay of two years for remitting the provident fund contribution. The learned Counsel for the respondent also pointed out that the documents produced by the appellant would clearly show that the salary of the employees were paid in time. When the salary is paid to the employees the employees share of

provident fund contribution, which amounts to 50% of the total contribution is deducted from the salary of the employees. The appellant was withholding this part of the contribution for such a long period without remitting to the respondent authority which is an offense U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of employees share deducted from the salary of the employees and withheld for such a long time. However as pointed by the learned Counsel for the appellant it is true that the loss of the appellant establishment more than doubled during the relevant point of time. As disclosed by Exbt. A1 communication send to the Government by the appellant it is very clear that the appellant establishment was badly affected by the rains and floods during 2018. Considering all the mitigating circumstances it is felt that the appellant is entitled for some relief as far as damages U/s 14B is concerned.

Considering all the above facts and circumstances, I am inclined to hold that interest of justice will be met if the

appellant is directed to remit 65% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 65% of the damages assessed U/s 14 B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer