



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

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

(Monday the 22nd day of November, 2021)

APPEAL No.393/2018
(Old No.ATA No. 165(7)/ 2014)

Appellant : M/s. Padmas Wedding Collections
Kacherithazham
Muvattupuzha
Ernakulam – 686 673.

By Adv. Ashok.B.Shenoy

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

This case coming up for final hearing on 31/08/2021 and this Tribunal-cum-Labour Court on 22/11/2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KC/24111/ Damages Cell / 2014 /15955 dt. 30/01/2014, 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 11/2005 to 02/2011. The total damages assessed is Rs.1,20,212/-.

2. The appellant is a Textile shop employing around 10 employees. In November 2007, the respondent sought to cover the appellant establishment w.e.f. 01/11/2005, by clubbing two other establishments. The respondent issued a coverage memo dt. 29/11/2007 covering establishments w.e.f 01/11/2005. A copy of the coverage memo is produced and marked as Annexure A1. The appellant remitted the contribution from November 2005 to November 2007 on 21/10/2008. In July 2013 the respondent served summons dt. 25/07/2013 proposing to impose damages U/s 14B of the Act for delayed remittance of contributions. The appellant was also afforded a personal hearing. The details of the damages were not disclosed to the appellant. The appellant attended the personal hearing and submitted a written statement that the appellant was under the bonafide belief that appellant was not coverable under the provisions of the Act, since they employed less than 10 employees. It was also pointed out that there was no deliberate delay in remitting the contribution. True copy of the written statement dt.21/08/2013 is produced and marked as Annexure A2. Ignoring the contentions of the appellant, the respondent issued the impugned order assuming that for every delay the establishments are liable to remit damages. A true copy of the order is produced and marked as Annexure

A3. The order issued by the respondent is bad in view of the fact that the order is not issued by a competent authority. The impugned order is also bad in view of the fact that the details of damages were not disclosed to the appellant. The appellant failed to consider any of the contentions raised by the appellant in the written statement. The finding is based on conjectures without any legal basis. The impugned order is also bad in view of the fact that it militates against the principles of law laid down by binding precedents. The respondent authority ought to have applied his mind to the circumstances pleaded before him. The impugned order is issued without a clear finding that the delay in remittance by the appellant is deliberate and willful. The Employees Insurance Court in IC No. 04/2013 vide its judgment dt.05/09/2013 has relieved the appellant of the liability to pay damages in the matter of delayed payment of contribution under ESIC Act, 1948. A true copy of the judgment is produced and marked as Annexure A4. Going by Para 30 of Employees Provident Fund Scheme, contribution are payable only within 15 days of close of the month in which wages is paid and deduction towards contribution is made. The respondent failed to consider their own circulars dt. 19/03/1964 and 24/10/1973 wherein the appellant is entitled for a grace period of 5 days.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 01/11/2005 since it satisfied all the requirements U/s 1(3)(b) of the Act for coverage, as on that date. Since there was delay in remittance of contribution the respondent initiated action U/s 14B of the Act by issuing summons dt. 25/07/2013 to show cause with documentary evidence as to why penal damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing on 04/09/2013. An opportunity was given to the appellant to verify the details of remittances such as the date of remittance, amount of remittance, period of delay etc as indicated in the damages statement. The Advocate who appeared on behalf of the appellant filed a written statement dt.21/08/2013. According to the written statement there was delay in view of financial constrains and technical problems during the relevant point of time. The delay in allotting code number was also raised by the Advocate for the appellant. It was clarified that the financial difficulty by itself cannot be a ground for delaying the remittance of provident fund contribution. It was also pointed out that the benefits envisaged and are provided under the Act and Schemes cannot be held

hostage to the vagaries of profit and loss of an establishment. The contentions of the appellant that they were not provided the details of assessment of damages is not correct. The summons issued to the appellant on 25/07/2013 contained month wise details of amount remitted, due date of payment and period of delay. The Advocate who appeared for the appellant did not raised any dispute regarding the delay statement. As per Para 38 (1) of EPF Scheme the employers are required to pay the contribution within 15 days of close of every month. The employer was allowed a grace period of 5 days to remit the contribution. However the grace period of five days is permissible, only in those cases where the remittance are made on or before 20th of succeeding month. If the remittance are beyond 20th , benefit of 5 days grace period is not applicable. The concession of grace period of 5 days for depositing the contribution has since been withdrawn w.e.f. February 2016. It was the responsibility of the appellant to ensure extension of Social Security Benefits to its employees once the conditions is stipulated U/s 1(3)(b) of the Act is satisfied. It is an absolute and unqualified liability and does not depend either on the vigilance or detection of the department concerned or upon the will of the department or upon the will of the employer to make the workmen members or not. The appellant cannot be permitted to

defeat the case by his own default. In **Ujjwal Transport Agency, Madras Vs Union of India**, 1998 LLR 1150 (Mad. HC). The Hon'ble High Court of Madras held that allotment of code number is not a reason for delaying the remittance of provident fund contribution.

4. The appellant establishment, with its sister concerns were clubbed and covered w.e.f 01/11/2005 through coverage memo dt.29/11/2007. The appellant did not dispute the coverage and remitted the contribution after almost an year, on 21/10/2008. Admittedly there was delay in remittance of contribution and the respondent authority therefore initiated action for assessing damages U/s 14B of the Act. An Advocate appeared before the respondent and filed Annexure A2 representation. In the representation it was pleaded that the appellant establishment along with other two establishments were clubbed and covered vide coverage memo dt.29/11/2007 w.e.f 01/11/2005 and therefore there was no wilful delay on the part of the appellant. According to the representation, they were under a bonafide belief that the provisions of the Act is not applicable to them. In the written submission it was also pleaded that the appellant establishment was suffering from financial difficulties. The learned Counsel for the respondent relying on the decision of the Hon'ble High Court of Chennai

in **Ujjwal Transport Agency Madras (Supra)** argued that allotment of code number is not a reason for delaying remittance of provident fund contribution. EPF Act, acts on its own force and it is the statutory liability on the part of the appellant to start compliance once the statutory requirements are met. The allotment of code number is done only of administrative purpose and is not mandated under the provisions of Act or Schemes.

5. The claim of financial difficulties is not proved through any evidence by the appellant before the respondent authority as well as in this appeal. In **M/s. Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013(1) KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B **if the appellant pleads and produces documents to substantiate the same.** In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent

evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability.

6. Hence the claim of financial difficulties cannot be considered for reducing or waiving penal damages.

7. The learned Counsel for the appellant pointed out that the authority which issued the impugned order is not competent as he is not a notified authority under the Act to assess damages U/s 14B of the Act. The respondent produced the copy of the notification No. SO 1553 dt. 17/04/2002 as Exbt.R1 to prove that he is a notified authority to assess damages U/s 14B of the Act.

8. The learned Counsel for the appellant also argued that as per Para 38 of EPF Scheme, an establishment is liable to pay contribution only after 15 days of the close of the every month in which the wages are paid. The learned Counsel for the respondent relied on the decision of the Hon'ble High Court of Kerala in **M/s Jewel Homes Vs RPFC**, W.P.(C) No. 25884/2011 to argue that the interpretation as provided by the learned Counsel for the appellant is not correct. He also relied on the decisions of the Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416.

9. The learned Counsel for the appellant pointed out that he is denied the grace period of 5 days. The learned Counsel for the respondent pointed out that this issue is also answered by the Hon'ble High Court of Kerala in its judgment in **M/s. Jewel Homes (supra)**. He pointed out that the grace period of 5 days is available to an employer who remits the contribution before 20th of that month.

10. The learned Counsel for the appellant also relied on the judgment of the Employees Insurance Court Alappuzha in IC No. 04/2013 wherein the damages imposed by the Deputy Director Sub Regional Office, ESIC under Employees State Insurance Act for the period 1/11/2005 to 30/09/2010 was held to be unsustainable. It is pointed out that the provisions of ESI Act and EPF Act as regards benefits payable to the employees are concerned are entirely different. Under EPF Act the respondent organization is liable to return the money to the covered employees with interest on a cumulative basis in the event of certain contingencies including retirement. The respondent organization is also liable to pay pension, not only to the member and his spouse but also to the children below 25 years. Hence the liability under both the Acts cannot be compared and the decision to waive damages

under ESIC Act cannot be taken as a ground for reducing or waiving damages under EPF and MP Act .

11. 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” .

12. The only valid argument raised by the learned Counsel for the appellant is with regard to clubbing and retrospective coverage of the appellant establishment. Though the Act and judgments of various High Courts do not give any protection to the appellant establishment, it is possible that the appellant establishment was under a bonafide belief that the appellant establishment was not coverable under the provisions of the Act in view of the fact that the employment strength of each unit was below 10. To that extent the appellant is entitled to some relief as far as damages U/s 14B is concerned.

13. 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 80 % of the damages.

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