



सत्यमेव जयते

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

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

(Monday the 06<sup>th</sup> day of December, 2021

**APPEAL No.463/2019**

Appellant

M/s. Traco Cable Company Ltd.,  
JFTC Factory, Tiruvalla  
Pathanamthitta – 670741.

By M/s. Menon & Pai

Respondent

The Regional PF Commissioner  
EPFO, Regional Office, Pattom  
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on  
06/09/2021 and this Tribunal-cum-Labour Court on 06/12/2021  
passed the following:

**ORDER**

Present appeal is filed from order No. KR/ TVM/  
22685/Damages Cell/2019-20/2525 dt. 12/09/2019  
assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter  
referred to as 'the Act'.) for belated remittance of contribution

for the period from 04/2018 to 03/2019. The total damages assessed is Rs.5,88,055/-.

2. The appellant is a Government of Kerala undertaking. The Thiruvalla unit of appellant, commenced its operations in the year 1990 and is engaged in the manufacturing of high quality electric cables and wires. The appellant establishment is covered under the provisions of the Act. There was delay in remittance of Provident Fund contribution during the relevant period because of financial constraints of the appellant establishment. The accumulated loss of the company exceeded the net worth of the appellant company. True copy of the annual report for the year 2016-17, 2017-18 and provisional Balance sheet for the year 2019 are produced and marked as Annexure A1, Annexure A1(a) and Annexure A1(b). The financial position of the appellant company started deteriorating from the year 2010. With mounting cash loss, the salaries and wages also could not be paid in time. Though there was delay in remittance of contribution the delay was not deliberate or willful and was due to circumstance beyond the control of the appellant. The respondent initiated action for levying damages for belated remittance of contribution for the period 04/2018 to 03/2019. The notice dt 06.05.2019 issued by the respondent U/s 14 B and

7Q of the Act is produced and marked as Annexure A2. On receipt of Annexure A2 notice, the appellant attended the hearing and submitted that the delay was due to the acute financial crisis of the appellant establishment. Damages are in the nature of penalty and penalty is imposed only when there is a willful or deliberate delay on the part of the employer in remitting the contribution. The respondent failed to consider whether there is any willful delay on the part of the appellant in delaying remittance of contribution. The respondent failed to exercise his discretion available under Sec 14B 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. In **Mcleod Russel India Ltd Vs RPFC**, AIR 2015 SC 2573 and in **Assistant PF Commissioner EPFO and Another Vs Management of RSL Textiles India Pvt Ltd**, 2017 (3) SSC 110 the Hon'ble Supreme Court held that the presence of mensrea or actus reus would be a determinative factor in imposing damage U/s 14B has also the quantum thereof since it is not inflexible that 100% of the arrears has to be imposed in all cases.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The establishment failed to pay statutory dues in time for the period from 04/2018 to 03/2019. The delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32 A of EPF Scheme. Accordingly a summons dt.12/09/2019 was issued to the appellant to show cause why damages U/s 14B 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. The representative did not dispute the delay statement send along with the summons. The representative only submitted that the delay in remittance was due to financial crisis. The appellant failed to produce any document to substantiate their claim of financial difficulties. The delay In remittance includes the contribution collected from the salary of the employees. The period of delay is upto 454 days which cannot be called as a slight delay. The Balance Sheet of the establishment which are only produced now shall not be relied upon since the appellant failed to produce the same before the respondent authority. There was no possibility of exercising the discretion, even if it is available to the respondent authority in this case, since the appellant failed to

substantiate their claim of financial difficulties. In **Chaiman, SEBI Vs Sreeram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act . Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant.

4. The only dispute in this appeal is with regard to the reason for delayed remittance of provident fund contribution as delay is not disputed. According to the learned Counsel for the appellant, the appellant establishment was in real financial constrains for the last so many years. He produced the annual reports of the appellant establishment for 31/03/2016 to 31/03/2018. The appellant delayed payment of wages and consequently there was delay in remittance of provident fund contribution. There is no proof that wages to the employees are delayed during the relevant point of time. Further the documents now produced in the appeal would generally prove that salary of the employees were paid in time. The learned Counsel for the respondent vehemently argued that the documents now produced by the appellant shall not be accepted as evidence, as these

documents were not produced before the respondent authority and proved before him. The Hon'ble Supreme Court of India in **Khandesh Spinning and Weaving Mills** case, 1960 (1) LLJ 548 SC held that the correctness of figures as shown in the balance sheets are to be established by proper evidence in court by those responsible for preparing the balance sheet or by other competent witnesses. Mere statements in balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. Citing various decisions of High Courts and also the Hon'ble Supreme Court the learned Counsel for the appellant argued that there shall be intentional and deliberate delay while levying damages U/s 14B of the Act. He cited the following decisions.

- 1) **Shanty Garments Vs RPFC, 2003 (1) CLR 228 (Mad)**
- 2) **RPFC Vs Harrisons Malayalam Ltd, 2013 (3) KLT 790**
- 3) **Bhojaraj Textile Mills Vs Presiding Officer EPF Appellate Tribunal New Delhi , 2020 LLR 194**
- 4) **Standard Furnishing Vs Registrar EPF Appellate Tribunal 2020 (3) KLJ 528.**

All the above cited cases relied on the decisions of the Hon'ble Supreme Court in **McLeod Russel India Vs RPFC, 2014 (15) SCC**

263 and **The Assistant PF Commissioner EPFO and Another Vs Management of RSL Textiles India Pvt Ltd**, 2017 (3) SCC 110.

5. The Hon'ble Supreme Court of India re-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 RPF**, 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”

6. In view of the above decision the financial difficulties of the appellant establishment is required to be examined independent of mensrea to decide whether the financial difficulties actually contributed to the delayed remittance of contribution. Though the learned Counsel for the respondent objected to admitting financial statements as evidence at the appellate stage, it is felt relevant to examine the financial position of the appellant establishment in the context of the claim made by the appellant. Though the relevant period for consideration is 04/2018 to 03/2019, the appellant produced the balance sheets for the years ending 31/03/2016 to 31/03/2018 to show that the appellant establishment was in financial difficulties even prior to the relevant period. From the Annual report for the year 2016-17 it is seen that the appellant establishment is in profit to the tune of Rs.133.94 lakhs. The total revenue for the year is Rs. 13747.98 lakhs and current assets is Rs. 12110.73 lakhs. Cash and Cash equivalents available with the appellant as on 31.03.2017 is Rs. 1666.67 lakhs. For the financial year ending 31.03.2018 the appellant company was under loss to the tune of Rs.878.08 lakhs, the total revenue income is Rs.11365.74 lakhs, current assets is Rs.12623.53 lakhs and cash and cash equivalent is Rs. 1541.11 lakhs. From the



provisional balance sheet for the year ending 31.03.2019, it is seen that the appellant establishment was in loss to the tune of Rs. 666.18 lakhs, total revenue income was Rs.16719.42 lakhs, the current assets was Rs.15081.69 and cash and cash equivalents is Rs.1794.15. Though the learned Counsel for the appellant failed to explain the documents produced and how it contributed to the delayed remittance of contribution, from a laymans' point of analysis it is clear that the delay in remittance of contribution was not at all due to the financial difficulties of the appellant establishment. The learned Counsel for the respondent pointed out that the wages and salary of the employees is seen to be paid on time from the documents produced. In absence of any evidence to the contrary, the claim of the appellant that there was delay in payment of wages to its employees cannot be accepted. When the wages of the employees are paid, the employees' share of contribution is deducted from the salary of the employees. The delay in remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust and the appellant cannot claim that there was no intentional delay, atleast to the extent of 50 % of the total contribution. The learned Counsel for the respondent also pointed out that the delay in remittance of contribution is

upto 454 days and the appellant cannot claim that such a delay of more than one year in remittance of contribution can be attributed to the financial difficulties of the appellant establishment.

7. However considering the fact that the appellant is a Government of Kerala undertaking and was running under loss during the relevant point of time, the appellant deserves some accommodation as regards the levy of damages is concerned.

8. Considering all the facts, pleadings, arguments 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 levied 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.

Sd/-

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