



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Wednesday the 24th day of November, 2021)

APPEAL No.465/2019

Appellant

M/s. Malabar Village Food Court
Muvattupuzha Road,
Vengalloor, Thodupuzha
Idukki – 685 584.

By Adv. Vipin. D.G

Respondent

The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Itoop

This case coming up for final hearing on 30.08.2021 and this
Tribunal-cum-Labour Court on 24.11.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/ KTM /
20783/APFC/ Penal Damages /14B / 2019-20 /3158 dt. 09/08/2019
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 04/2013 to 02/2019 (remittance of EPF dues made during the period 02/07/2015 and 31/03/2019). The total damages assessed is Rs.1,54,395/-.

2. Appellant is a proprietary concern engaged in the hotel business. The appellant is covered under the provisions of the Act. The business was not profitable from the year 2013 onwards. Accordingly the appellant was forced to reduce the staff strength of the appellant establishment after 2014. There was some delay in payment of wages to the employees from 2013 onwards. However the appellant remitted the contribution, though belatedly. In the meanwhile Enforcement Officer of the appellant establishment inspected the appellant establishment and pointed out some non-enrolment. The appellant thereafter received notice from the respondent organization. The appellant entered appearance and explained the delay in remittance of contribution. Ignoring the contentions of the appellant, the respondent issued the impugned orders. The respondent authority failed to consider the circumstances that delayed the remittance of contribution. The respondent ought to have found that there was no wilful negligence or intentional delay on the part of the appellant. The respondent authority ought to have considered that there was no

mensrea in belated remittance of contribution. The respondent authority failed to consider the financial difficulties of the appellant before issuing the impugned order.

3. The respondent filed counter denying the above allegations. The appellant is liable to remit contribution within 15 days from the end of each month as per Para 38 of EPF Scheme. Any belated remittance will attract penal damages. The Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982 LAB IC 1442 held that Para 38 of EPF Scheme obliged the employer to make the payment within 15 days of close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contributions, payable by him and on behalf of the member, in the first instance. The respondent authority therefore issued notice dt. 20/06/2019 directing the appellant to show cause why damages U/s 14B shall not be levied. The appellant was also given an opportunity for personal hearing on 18/07/2019. A representative of the appellant attended the enquiry, admitted the delay and requested for waiver of damages. No ground or evidence was pleaded or adduced to justify the delay. The plea of financial difficulties raised by the appellant in this appeal was not raised

before the respondent authority. The appellant failed to produce any document to substantiate their claim of financial difficulties. Hence it is to be presumed that the delay in remittance was willful and deliberate. The appellant was informed of the damages calculation indicating the due date of remittance and the date of remittance by the appellant and the delay occurred in remittance. A copy of the said delay statement is produced and marked as Annexure R1. Annexure R1 delay statement was acknowledged by the appellant. The appellant is trying to mislead this Tribunal by stating that the figures shown in the inspection report produced as Annexure A2 and figure shown in the impugned order varies with each other. Annexure A2 is the notice U/s 7A dt.26/10/2018 issued to the appellant establishment for non- remittance of provident fund dues for the period from 01/2013 to 04/2018 for which an order U/s.7A was issued on 06/02/2019. A copy of the said order is produced as Annexure R2. The Hon'ble Supreme Court of India in **Hindustan Times case**, AIR 1998 SC 688 held that financial difficulties cannot be pleaded as a ground for delayed remittance of contribution. **In Chairman, SEBI Vs Sriram Mutual Fund and Another**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of

provisions of a civil law. The Hon'ble Supreme Court of India in **Organo Chemical Industries Ltd Vs Union of India**, 1979 LAB IC 1261 held that even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time. The Hon'ble Supreme Court in the above case also held that Sec 14B is meant to penalize the defaulting employer and it has got nothing to do with the loss which is caused to beneficiaries under this Scheme.

4. The appellant establishment delayed remittance of contribution for the period 04/2013 to 02/2019. The respondent therefore initiated action U/s 14B to assess damages for belated remittance of contribution. A notice was issued to the appellant along with a delay statement which is produced as Annexure R1. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and requested for waiver of damages on the ground of financial difficulties. No documents were produced before the respondent authority to substantiate their claim of financial difficulties. The respondent therefore issued the impugned order in terms of Annexure R1 notice.

5. The appellant pleaded mainly two grounds for reduction or waiver of damages in this appeal. The first ground pleaded is with regard to the financial difficulties of the appellant establishment. The learned Counsel for the respondent pointed out that the appellant failed to produce any document before the respondent authority to substantiate their claim of financial difficulties. It is seen that the appellant failed to produce any documents in this appeal also to prove the financial difficulties pleaded by them. 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. Another ground pleaded by the appellant in this appeal is that there was no intentional delay or mensrea in belated remittance of contribution. 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 the 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”

Hence it is clear that mensrea is not a relevant consideration while assessing damages U/s 14B of the Act.

7. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer