



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Friday the 30th day of July, 2021)

APPEAL No.510/2019
(Old No. ATA No.780(7) 2008)

Appellant : M/s. Alexandra Estate
B-Division, Padagiri
Palakkad – 678 509.

By Adv. Joseph Kodianthara

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
31/03/2021 and this Tribunal-cum-Labour Court on
30/07/2021 passed the following:

ORDER

Present appeal is filed from Order No.
KR/KK/11555/Enf-2(3)/2007/2645 dt.05/08/2008 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 01/2001 to 03/2007. The total damages assessed is Rs. 1,82,625/-.

2. The appellant is a plantation industry. Plantation industry in India and particularly in the state of Kerala was facing huge financial difficulties due to various climatic factors as well as the high wage structure prevailing in this state. From 04/1996 the plantation industry in Kerala was under serious threat due to poor crop realization rising labour cost and adverse market conditions. Because of the financial difficulties the appellant establishment delayed remittance of provident fund contribution. The income earned from the plantation at that time was not even adequate to meet the expenses of the plantation. In view of the difficulties faced by the plantation industry, the United Planters Association in South India took up the matter with Central Government by a representation dt.01/11/2000. The Association also sought exclusion of the plantations from the provisions of the EPF Act, U/s 16 (2) of the Act. The 1st

respondent issued notice dt. 28/03/2008 to the appellant to show cause why damages U/s 14B should not be recovered for delayed remittance of contribution. A representative of the appellant attended the hearing and filed written statement dt.16/11/2008 and explained the reasons for the delay. Though the respondent was aware of financial crisis in plantation industry, impugned order was issued ignoring the contentions of the appellant. The respondent authority failed to exercise his discretion while levying damages U/s 14B of the Act. There was no willful delay on the part of the appellant in delayed remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The establishment is chronic defaulter. The respondent authority initiated action for delayed remittance of contribution by issuing notice dt. 26/03/2008 to show cause why damages as envisaged U/s 14B of the Act shall not be assessed and recovered from the appellant. A detailed delay statement showing the actual date of payment, the due date

of payment and the delay in remittance was forwarded alongwith the notice. The appellant was also given an opportunity for personal hearing on 24/04/2008. The enquiry was adjourned on various dates on the request of the appellant. The main contention of the appellant was that there was no intentional delay in remittance of contribution and the delay was only due to financial constraints of the appellant during the relevant point of time. Financial difficulties by itself not a ground for reducing damages. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs. Union of India***, 1979 (2) LLJ 416 rejected the ground of financial difficulties in weaving the damages for belated remittance of contribution. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd Vs Union of India*** AIR 1976 SC 688 also rejected the claim of financial difficulties as a ground for weaving or reducing damages. Any delay or default in remittance of contribution will attract damages as per Para 32A of EPF Scheme. The respondent authority has considered the claim of the appellant and issued a speaking order taking into account all the facts and circumstances of this case. In ***Calicut Modern Spinning &***

Weaving Mills Ltd Vs RPFC, 1981(1) LLJ 440 the Division Bench of the Hon'ble High Court of Kerala held that the financial difficulties as such will not be a ground for reducing or waving damages.

4. The appellant delayed payment of provident fund contribution during the period 01/2001 to 03/2007. There is no dispute regarding the delay in remittance. According to the appellant the delay occurred due to financial crisis of the appellant in particular and that of the plantation industry in general during the relevant point of time. However the appellant failed to substantiate their claim by producing the relevant documents to show that the appellant was really under financial constraints. 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. The appellant also pleaded that there was delay in payment of wages to the employees. However the claim of the appellant regarding delayed payment of wages is also not supported by any evidence. The learned Counsel for the respondent pointed out that the employees share of contribution is deducted from the salary of the employees and the appellant even failed to remit the same in time. The claim of the learned Counsel for the respondent is also not supported by any evidence and therefore it is not possible to accept the same in this particular case in view of the stand taken by the appellant regarding the financial difficulties of the plantation industry in general at the relevant point of time.

5. Considering all the facts, circumstances and pleadings, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of 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 80% of the damages

Sd/-

(V. Vijaya Kumar)
Presiding Officer