



सत्यमेव जयते

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

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

(Wednesday the 23rd day of March, 2022)

APPEAL No.53/2020

Appellant

M.E.S Public School
Orkattery,
Kozhikode – 673 542.

By Adv. K.K. Premalal
Adv.Vishnu Jyothis Lal

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for final hearing on
16/03/2022 and this Tribunal-cum-Labour Court on
23/03/2022 passed the following:

ORDER

Present appeal is filed from Order No. KR/
KKD/0017782/ 000/ Enf-1(2)/ Damages / 2019-20 / 6806 dt.
12/03/2020 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 07/2013 to 05/2018

(Remittances made during the period from 23/03/2017 to 12/06/2019). The total damages assessed is Rs. 8,86,440/-.

2. The appellant is an Educational Institution run by a charitable organization. The sole income of the school is the fee collected from the students. There was acute financial difficulties during the relevant point of time. The shortage of funds resulted by essential construction and development has actually lead to the delayed payment of EPF contribution. The appellant received a notice dt.28/06/2019 proposing levy of damages for delayed remittance of contribution. A true copy of the notice dt. 28/06/2019 is produced and marked as Annexure 1. A representative of the appellant attended the hearing and explained the reason for delayed remittance of contribution. Without considering the facts and circumstances the respondent issued the impugned order, a copy of which is produced and marked as Annexure 2. In **Quilon District Automobile Workers co-Operative Society Ltd Vs ESIC**, 2017 (2) KLT 21. The Hon'ble High Court of Kerala held that the respondent authority shall exercise its discretion while deciding the quantum of damages. After introduction of Sec 7Q, Sec 14 B of the Act has undergone lot of changes as pointed out by the Division Bench of the Hon'ble

High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd**, 2013 (3) KLT 790. In **ESIC Vs HMT Ltd**, AIR 2008 SC 1322 and in **Assistant PF Commissioner EPFO and Another, Vs Management of RSL Textiles India Pvt. Ltd**, 2017 (3) SCC 110 the Hon'ble Supreme Court held that the existence of mensrea or actus reus to contravene a statutory provisions is also a necessary ingredient while levying damages U/s 14B of the Act .

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant establishment is bound to remit contributions as per Para 30 of EPF Scheme. There was delay in remittance of contribution from 07/2013 to 05/2018. A notice was therefore issued to the appellant to show cause why damages shall not be levied. A detail monthwise delay statement was also forwarded to the appellant along with the notice. The appellant was also given an opportunity for personal hearing on 13/08/2019. A representative of the appellant attended the hearing and pleaded that the damages and interest for dues remitted under Employees Enrollment Campaign 2017 was also included in the statement. The same was verified and it is found that penal damages for the dues remitted under Employees

Enrollment Campaign (EEC) 2017 within 15 days of declaration for the period 07/2013 to 12/2016 comes to Rs. 2,07,411/- and the dues remitted under EEC after 15 days of declaration for the period 02/2014 to 12/2016 comes to Rs. 29,480/- therefore the penal damages amounting to Rs.2,07,411/- for the dues remitted under EEC 2017 was not included in the final damages. The Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 held that the employer is bound to contribute under the Act every month voluntarily irrespective of the fact that the wages have been paid or not. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 held that mensrea is not an essential ingredient for contravention of provisions of a civil Act .

4. The EPF Act and Schemes mandates that the contribution is required to be paid in respect of all the eligible employees within the close of 15 days after the salary is earned by the employees. The appellant delayed remittance of contribution. The respondent, therefore, initiated action U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent authority issued a notice directing to the appellant to show cause

why 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 and submitted that the contribution made in time as per the Employees Enrollment Campaign 2017 is also included in the delay statement enclosed along with the notice. The respondent authority considered the request and excluded the damages of Rs.2,07,411/- from the assessment pending clarification from the Head Quarters of the respondent. The respondent authority issued the assessment order after taking into account the submission made by the representative of the appellant.

5. In this appeal, the learned Counsel for the appellant raised the issue of financial difficulties of the appellant establishment as a ground for delayed remittance of contribution . The appellant however failed to produce any document to substantiate their claim of financial difficulties before the respondent authority as well as in this appeal.

6. 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 RPF**, 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.

7. The learned Counsel for the respondent pointed out that the damages U/s 14B is assessed on belated payment of contribution and therefore it is clear that the amount involved in the above dispute had already been remitted by the appellant establishment.

8. The learned Counsel for the appellant pointed out that there was no intentional delay in remittance of contribution and the delay was only due to the financial constrains of the appellant establishment. The learned Counsel for the respondent submitted that the appellant failed to remit even the employees share of the contribution deducted from the salary of the

employees which is an offense U/s 405 & 406 of Indian Penal Code. The learned Counsel for the appellant also pointed out that there is no mensrea in belated remittance of contribution.

9. 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 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”

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer