



सत्यमेव जयते

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

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

(Tuesday the 6th day of April, 2021)

APPEAL Nos.59/2019 & 469/2019

Appellant : M/s. Meenachil Rubberwood Limited,
Adivaram P.O,
Poonjar,
Kottayam – 686582.

By Adv. V. Krishna Menon

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kottayam - 686001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on
19.02.2021 and this Tribunal-cum-Labour Court on
06.04.2021 passed the following:

ORDER

Appeal No. 59/2019 is filed from Order No.KR /
KTM/15549/APFC/Penal Damages/14B/2018-19/3176
dt.10/01/2019 assessing damages U/s 14B of EPF &
MP Act (hereinafter referred to as 'the Act) for belated
remittance of contribution for the period from 03/2016
to 05/2018 (ie., remittance of EPF dues between

01/10/2017 and 30/09/2018) The total damages assessed is Rs. 6,57,849/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. **Appeal No. 469/2019** is filed from order No.KR / KTM / 15549 /APFC /Penal Damages/14B/ 2019-20/3638 dt.19/09/2019 assessing damages U/s 14B of EPF and MP Act (hereinafter referred 'to Act') for belated remittance of contribution for the period from 01/2017 to 10/2018 (remittance of EPF dues made during the period from 07/2018 & 06/2019). The total damages assessed is Rs.4,16,777/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

3. The appellant establishment is a Company registered under Company's Act 1956. The appellant establishment is engaged in the business of manufacturing and selling of treated rubber wood, rubber wood boards, furniture made out of the processed rubber wood and interior decoration work. The appellant is facing heavy financial difficulty. The appellant did not commit any default in remitting contribution. The appellant received a notice from the respondent proposing the imposition of

damages U/s 14B of the Act. A representative of the appellant attended the hearing and submitted their objection. Without considering the representations of the appellant, the respondent issued the impugned orders. The appellant company is in loss from the very beginning. The accumulated loss of the company as on 31/03/2018 was Rs.680.36 lakhs as against a share capital of 180 lakhs. The accumulated loss of the company is more than the net worth of the company. The balance sheets of the company for the year 2015-16, 2016-17 and 2017-18 are produced and marked as Annexure A1 to A3. A copy of the written submission filed by the appellant before the respondent is produced and marked as Annexure A5. The respondent failed to exercise his discretion U/s 14B of the Act. There is no proof to show that there is any intentional default in payment of contribution from the side of the appellant. As already stated the appellant was facing heavy financial constraints during the relevant point of time. The Hon'ble High Court of Kerala in ***RPFC Vs Harrisons Malayalam Ltd***, 2013(3) KLT 790 held that financial difficulties is a relevant consideration while imposing damages as per section 14B of the Act.

4. The respondent denied the above allegations. Admittedly there was delay in remittance of provident fund contribution by the appellant. When there is delay in remittance of contribution, the appellant is liable to remit damages U/s 14B of the Act read with Para 32A of the EPF Scheme. The respondent therefore issued a notice to the appellant to show cause why damages U/s 14B shall not be levied for belated remittance of contribution. A detailed statement of delay was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed a written statement highlighting the financial difficulties of the appellant establishment. No documents to substantiate the claim of financial difficulties was produced by the appellant establishment. The ground of financial difficulties for non-remittance of provident fund contribution was denied by the Hon'ble Supreme Court in ***Hindustan Times case***, in AIR 1998 SC 688. In ***Calicut Modern Spinning and Weaving Mills Vs RPFC***, 1982 LAB IC 142, the Hon'ble High Court of Kerala held that Para 38 of EPF Scheme obliged the employer to make the provident fund contribution within 15 days of close of every month

and Para 30 cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the member employed by him in the first instance. It means that the appellant is required to make the contribution every month irrespective of the fact whether wages have been paid or not. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund**, Civil Appeal No. 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of the provisions of a Civil Act. Therefore the delay in payment of provident fund contribution cannot be waived whether the delay is intentional or not. Provident Fund contribution is part of wages of employees and non-remittance of contribution under the Act is a violation of fundamental rights of the employees as guaranteed under article 21 of the Constitution. In **Organo Chemical Industries Vs Union of India**, 1979 LAB IC 1261 the Hon'ble Supreme Court held that Sec 14B is meant to penalize a defaulting employer to prevent and thwart further delay in remittance of contribution. Hence damages is in substance a penalty imposed on the appellant for breach of statutory obligation.

5. The order issued U/s 7Q cannot be clubbed with the Section 14B order and no appeal can be filed from a demand issued U/s 7Q of the Act.

6. The basic contention raised by the appellant in this appeal for belated remittance of contribution is that of financial difficulties. According to the learned Counsel for the appellant the appellant establishment is running under loss from the very inception. The accumulated loss of the appellant company as on 31/03/2018 is Rs 680.36 lakhs. The appellant also produced Annexure A1 to A3 balance sheets of the appellant company for the year 2015-2016, 2016-2017 and 2017-2018 to substantiate their claim of financial difficulties. On a perusal of the statement of profit and loss account ending 31/03/2016 it is seen that the total revenue income for the year is Rs.3.7 crores and employees benefit expenses are roughly Rs.1.58 crores. The loss for the year is 72.35 lakhs. For the year 31/03/2017 the total revenue income is Rs.5.85 crores and the employee benefit expenses is approximately Rs.1.56 cores and loss reported is Rs.12.37 lakhs. For the year 31/03/2018 the revenue income is 4.45 crores and the employee benefit expenses is roughly Rs.1.58 crores and the loss is Rs.30.58

lakhs. For an establishment having such a revenue income and paying the employee benefit expenses to this extent shall have no problem in remitting the contribution in time and cannot plead financial difficulties as an exclusive reason for delay in payment of provident fund contribution. The learned Counsel for the respondent argued that the appellant failed to produce any documents before the respondent authority at the time of Section 14B hearing and therefore the documents now produced by the appellant in these appeal proceedings may not be taken into account. He also argued that the balance sheet by itself is not an authority to prove the financial status of an establishment. The Hon'ble Supreme Court in ***Aluminium Corporation Vs Their Workmen***, 1964 (4) 2 SCR 429 held that the mere statements in the balance sheets regarding current assets and current liabilities cannot be taken as sacrosanct. The correctness of the figures reflected in a balance sheet are to be established by proper evidence in any proceedings. It is true that the figures in the balance sheet cannot be treated as sacrosanct in the absence of a proper explanation with regard to the figures furnished in the balance sheet. However, it can be seen that the appellant establishment

was running under loss during the relevant point of time. It is a consistent view of the Hon'ble Supreme Court as well as High Courts that financial difficulties shall be a mitigating factor while assessing damages U/s 14B of the Act. The appellant took a view that there is no intentional delay or mensrea in belated remittance of provident fund contribution. According to the learned Counsel for the respondent the appellant has no case that the wages of the employees were not paid in time. The documents now produced by the appellant also indicate that the wages of the employees were paid in time. When the salary of the employees is paid, the employees' share of the contribution, which amounts to 50% of the total contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 405 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution, at least to the extent of the employees' share of contribution deducted from the salary of the employees.

7. The learned Counsel for the appellant pointed out that the order issued in Appeal No 59/2019 was ex-parte and without considering the actual financial situation of the appellant establishment. He relied on the decision of the Division Bench of the Hon'ble High Court of Kerala in ***Standard Furniture Vs EPF Appellate Tribunal***, 2020 (3) KHC 79 (DB) to argue that an order without considering the circumstances cannot be sustained. On a perusal of the impugned order in Appeal No. 59/2019, it is seen that the argument put forth by the learned Counsel for the appellant is correct. According to the Hon'ble High Court, levy of damages U/s 14B of the Act is not automatic and that all the circumstances which lead to the delay in remitting provident fund contribution have to be factored by the authorities before issuing an order U/s 14B. It can be seen that the impugned order in Appeal No 59/2019 is issued in an extremely casual manner on the first date of the hearing itself. Nobody attended the hearing and the respondent authority proceeded to quantify the damages as per the Para 32A of the EPF Scheme. It is but proper that a word of caution should be given to the respondent authority to handle such proceedings in a careful manner and to ensure

that speaking orders elaborating the reasons shall be issued particularly when the order is imposing penalty on belated remittance of contribution. This is a case which could have been remitted back to the respondent authority to re-issue the orders by relying on the directions of the Hon'ble High Court of Kerala in the above referred case. However it is seen that in the connected Appeal No.469/2019, the respondent has taken care of the major deficiencies in the impugned order Appeal No. 59/2019 and therefore it is felt that by remitting the matter back to the respondent can only delay the process and lead to harassment of the appellant establishment.

8. 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 65% of the damages assessed as per the impugned order.

9. The learned Counsel for the respondent pointed out that no appeal is maintainable from an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014

SC 295 the Hon'ble Supreme Court held that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also clarified that no appeal can be prefer against an order issued U/s 7Q of the Act.

Hence the appeals against 14B orders are partially allowed and the impugned orders are modified and the appellant is directed to remit 65% of damages. The appeals filed against the demand of interest U/s 7Q of the Act are dismissed as not maintainable.

Sd/-
(V. Vijaya Kumar)
Presiding Officer

