



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Monday the 15<sup>th</sup> day of March, 2021)

**APPEAL No.593/2019**

(Old No. ATA 830(7) 2013)

Appellant

M/s. Indroyal Crafts (P) Ltd  
T.C 2/2465 (5,6),  
M.G Road, Royal Plaza,  
Pattom P.O,  
Thiruvananthapuram- 695 004.

By Adv. Ajith S. Nair

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  
11/02/2021 and this Tribunal-cum-Labour Court on  
15/03/2021 passed the following:

**O R D E R**

Present appeal is filed from order No.  
KR/22925/RO/TVM/PD/VSP/2013/4452 dt. 03/10/2013  
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 03/2011 to 02/2012. The total damages assessed is Rs. 2,48,561/-.

2. The appellant is Company is incorporated under the provisions of Company's Act 1956 and is engaged in the business of manufacturing and sale of wooden furniture. The appellant company was facing acute financial crisis due to various reasons. The company is engaged in furniture business and the fluctuations in the raw materials badly affected the financial stability of the appellant establishment. The company was finding extremely difficult to run the day to day business during the period 2011-2012 due to financial difficulties. The salaries of the employees were also in arrears during the relevant period. While so the respondent issued notice directing the appellant to show cause why damages U/s 14B of the Act read with Para 32A of the Scheme shall not be levied on the appellant. The appellant appeared before the respondent and explained the financial position of the appellant establishment. Without considering the submissions made, the respondent issued the impugned order. The impugned order is a non speaking order, in the

sense that the order is issued mechanically without applying mind to the submissions made by the appellant. The respondent imposed maximum damages though no reasons was given for the same. The respondent ought to have noticed that there is no mensrea in belated remittance of contribution. The respondent ought to have seen that the appellant was prompt in compliance during earlier periods. The existence of the establishment is of prime importance for the welfare of the employees rather than penalizing the appellant which is already under financial strain.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act w.e.f 01/03/2009 U/s 2A of the Act. The appellant defaulted in payment of contributions for the period 03/20011 to 2/2012. The delay in payment attracts damages U/s 14B of the Act. Hence a notice dt. 23/07/2013 was issued to show cause why damages as stipulated under Sec 14B of the Act shall not be levied from the appellant. The employer was also advised to appear before the respondent authority on 10/09/2013. The appellant was represented by its Assistant Manager who submitted a letter confirming the

delay in remittance of contribution. After considering all the facts and circumstances, the respondent issued the impugned order. It is an admitted fact that there was delay in remittance of contribution and the appellant is therefore liable to pay damages as stipulated under the provisions of the Act and Schemes. The claim of financial constraints for reducing or waiving damages was declined by Hon'ble Supreme Court in ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 SC and also in ***Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 688 while considering whether financial difficulties of an establishment can be a mitigating factor for reducing damages. The Hon'ble Supreme Court of India in ***Organo Chemical case*** (supra) held that " Even if it is assumed that there was a 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 point of time ". In ***Sky Machinery Ltd Vs RPFC***, 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waiving penal damages for delay in depositing provident fund contribution.

The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sri Ram Mutual Fund**, Civil Appeal No. 9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provision of a civil Act. It is clarified that penalty is attracted as soon as the contravention of the statutory obligations contemplated by the Act and regulation is established and hence the intention of party is irrelevant. The damages is assessed after following the due process and allowing the appellant adequate opportunity to establish their justification for delayed remittance of contribution. Having failed to establish any ground before the authority U/s 14B, the appellant cannot raise the same in an appeal U/s 7(I) of the Act.

4. The only ground pleaded by the learned Counsel for the appellant is that of financial difficulties. To support the claim the appellant produced the summary Profit and Loss account of the establishment as on 31/3/2012 as Annexure A4. On a perusal of the summary statement of Profit and Loss account it is seen that the appellant company is having a revenue receipt of 11.42 crores in the financial year ending 31/03/2012 and 11.65 crores for the financial

year ending 31/03/2011. The employee benefit expenses of the appellant during 2012 was 3.24 crores and the year ending 31/3/2011 the same was 2.83 crores. It is also seen that the company has earned a profit of 1 crore in the year ending 31/03/2012 and profit of Rs.15.50 lakhs during the financial year ending 31/03/2011. As already pointed out the profit and loss account produced by the appellant is 2 page statement from which it is not possible to arrive at the actual financial position of the appellant establishment. In ***Aluminum Corporation Vs their Workmen***, 1964 (4) SCR 429 the Hon'ble Supreme Court held that the current assets and liabilities as reflected in the Balance Sheet and Profit and Loss Account cannot be accepted unless the same is proved through a competent person. From the minimum available data, as discussed above, it is not clear as to how the appellant is claiming to prove the financial difficulties through Annexure A4 document. The learned Counsel for the respondent also pointed out that from the document produced by the appellant it can be seen that the wages of the employees are paid in time. Though the appellant claimed that there was delay in payment of wages there is nothing on

record to substantiate the same. According to the learned Counsel for the respondent, the employees' share of contribution is deducted from the salary of the employees as and when the wages are paid and even that part of the contribution that is deducted from the salary of the employees is not remitted by the appellant in time. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot claim that there is no mensrea in belated remittance of contribution atleast to the extent of the employees share of contribution. Further being a profit making company the appellant cannot claim that the delay in payment of contribution was not intentional.

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

Hence the appeal is dismissed.

Sd/-

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