



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

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

(Wednesday the 27th day of April, 2022)

APPEAL No.69/2021

Appellant : M/s. Kerala State Handloom
Development Corporation,
Thilleri Road,
Kannur - 670 001.

By Adv. Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Fort Building
V.K. Complex , Fort Road
Kannur – 670 001

By Adv. K.C. Santhosh Kumar

This case coming up for final hearing on 13/04/2022 and this Tribunal-cum-Labour Court on 27/04/2022 passed the following:

ORDER

Present appeal is filed from order No. KR/KNR/3215/Enf. /Damages1(1)/2021-22/451 dt.17/08/2021 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 02/2020 to 01/2021. The total damages assessed is Rs. 2,67,078/-.

2. The appellant is Government of Kerala undertaking and is engaged in the manufacture and marketing of handloom products. The appellant establishment is covered under the provisions of the Act. With the growth of power loom sector and the low price of power loom products, the handloom product had to face competition from the former. The fluctuating nature of prices of yarn also imposed great hardship on handloom weavers. One of the key financial problem faced by the handloom is irregular payment of dues for the products supplied by them. Another problem faced is lack of assistance from government in the form of subsidies. The financial position of the appellant establishment has been declining due to various factors leading to increased accumulated losses from the year 2000 onwards. The appellant was also facing cash flow constraints. With increase in losses and increase in salary and overheads to the employees and increase in other administrative cost, the financial position of the appellant deteriorated and the accumulated loss is Rs. 109,54,57,008/- and loss for the financial year 2019-2020

is Rs 7,85,79,388/-. The true copy of the balance sheet for the year 2019-2020 is produced and marked as Annexure A1. Despite the adverse financial condition, the company paid the salary to its employees. However there is some unintentional delay in remittance of contribution. Since there was some delay in remittance of contribution, the respondent initiated proceedings U/s 14B of the Act vide notice dt.13/07/2021. The appellant was also given an opportunity for personal hearing on 22/07/2021. True copy of the notice is produced and marked as Annexure A2. A representative of the appellant appeared for personal hearing through Google Meet Platform on 11/08/2021 and explained the facts which caused the delay. Without adverting to any of the contentions placed by the appellant, the respondent issued impugned order, a copy of which is produced and marked as Annexure A3.

3. The respondent failed to exercise its discretion available under Sec 14B and Para 32A of EPF Scheme. In **RPFC Vs SD College, Hoshiapur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of

damages. In **RPFC Vs Harrison Malayalam Ltd**, 2013 (3) KLT 790 the Division Bench of the Hon'ble High Court of Kerala held that the officers concerned shall exercise their discretion while looking at the mitigating circumstances which includes financial difficulties projected by the employees. In **McLeod Russel India Pvt. Ltd Vs RPFC**, AIR 2015 SC 2573 and **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 presence of mensrea or actus reus would be a determinative factor in imposing damages U/s 14B as also the quantum thereof. In **Sreelakshmi Agencies Pvt. Ltd Vs EPFO and another**, W.P.(C) No. 10181/2010 and also in **Standard Furnishing Vs Registrar EPF Appellate Tribunal**, 2020 (3) KLJ 528, the Hon'ble High Court of Kerala held that levy of damages is not automatic and all circumstances which lead to the delay in remitting provident fund contribution have to be factored by the authorities concerned before issuing the order. In **M/s. RB Ariyakudi Primary Agriculture Co-operative Bank Vs EPF Appellate Tribunal and another**, 2020 LLR 229 the Hon'ble High Court of Madras held that damages levied without considering financial crisis pleaded by an employer

on merits and not considering mensrea on the part of the employer are not sustainable .

4. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution for the period from 02/2020 to 01/2021. The respondent therefore issued a show cause notice along with the delay statement directing the appellant show cause why damages as envisaged U/s 14B of the Act should not be imposed. A notice was issued on 13/07/2021 and an opportunity for personal hearing was also given on 22/07/2021 and 11/08/2021. Though the appellant pleaded financial difficulties, they failed to produce any documentary evidence to corroborate their claim. The damages for the period 03/2020 and 04/2020 amounting to Rs.1,26, 129/- were not levied in view of the lockdown due to Covid-19 pandemic. In **A-One Steel Company Ltd Vs RPFC**, 1993 (2) LLJ 226 (P&H) the Hon'ble High Court of Punjab and Haryana held that damages U/s 14B has no correlation with the loss suffered as a result of delayed payment, because damages levied and recovered under the Section go to the general account of the fund and not into the employees account. Timely deposit of provident fund is a statutory obligation

which cannot be allowed to be diluted by exterior factors. The Hon'ble Supreme Court in **People's Union of Democratic Rights Vs Union of India**, 1982 (3) SCC 235 held that “ Labour laws are enacted for improving the conditions of workers and the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine which they would not mind paying, thus rendering it impossible to ensure observance of labour laws”. Prior to the amendment of the Act with effect from 1999, the respondent authority had discretion to decide the quantum of damages. After amendment, the respondent have to follow the sliding table incorporated in Para 32 A of the Scheme and therefore is left with no discretion to reduce or waive damages. The appellant is under legal obligation to remit the contribution recovered from the employees to provident fund within stipulated time. Non-remittance of employees' share of contribution deducted from the salary of the employees' are punishable U/s 405 & 406 of Indian Penal Code. In **SH Salve Kadam Co. Vs RPFC**, 1981 LAB IC 568 (Kant) the Hon'ble High Court of Kerala held that “ The Act is a social welfare legislation and its object is to promote the welfare of the employees. It requires the employer and the employees to pay

contribution to the fund of the employee at the prescribed rate. When it is obligatory for the employer to ensure payment of contribution to the fund of employee, the question of intention does not arise. If intention would be necessary element, the object of the scheme would be frustrated”.

5. The appellant establishment delayed remittance of contribution for the period 02/2020 to 01/2021. The respondent therefore initiated action for assessment of damages vide notice dt. 13/07/2021. The appellant was also given opportunity for personal hearing through Google Meet platform on 22/07/2021 and 11/08/2021. A representative of the appellant attended the hearing . The representative submitted financial difficulties as a reason for delayed remittance of contribution but failed to produce any documents to substantiate the claim.

6. In this appeal the learned Counsel for the appellant reiterated its position before the respondent authority. According to him, the delay in remittance of provident fund contribution was due to the financial constraints of the appellant establishment. According to the learned Counsel for the appellant the accumulated loss of the appellant company during 2019-20 was

Rs.109,54,57,008/- and the loss for the financial year is Rs.7,85,79,388/-. The appellant produced two page extract of the balance sheet for the year ending 31/03/2020 to substantiate the claim. The learned Counsel for the respondent pointed out that this two page extracts of balance sheet cannot be accepted as a evidence to substantiate the financial position of the appellant establishment. In **Khandesh Spinning and Weaving Mills Vs The Rashtriya Girnai Kantha sung**, AIR1960 SC 571 the Hon'ble Supreme Court held that the balance sheet does not by itself prove the financial status of an establishment unless the figures reflected therein are proved through a competent witness before the lower Court. However from the balance sheet it is seen that the current assets of the appellant establishment is 57,36,40,253/- and the employees benefits is Rs 8,95,64,900/-. The loss for the year is Rs.7,85,79,388/-. Though the appellant establishment is running under loss the delay in remittance of contribution cannot be exclusively due to the fact of financial difficulties. The learned Counsel for the respondent relied on the decision of the Division Bench of the Madurai Bench of Madras High Court dt. 23/02/2021 in **Ramanathapuram District Co-operative Printing**

Works Vs EPF Appellate Tribunal and Another, WA (MD) 525/2012 and that of the Hon'ble High Court of Madras in **Assistant PF Commissioner Vs Employees PF Appellate Tribunal and another W.P.(C) No. 4633/2012** wherein the Hon'ble High Court held that the damages shall be levied in accordance with provisions, inspite of the financial difficulties of the appellant establishment .

7. The learned Counsel for the appellant also argued that there was no intentional delay in remittance of provident fund contribution and there is no mensrea. The learned Counsel for the respondent pointed out that it is an admitted fact that the appellant was paying salary to its employees in time. When the salary of the employees are paid, the employee's share of contribution is deducted from the salary of the employees. Non- remittance of the employees' share of contribution deducted from the salary of employees is an offence of breach of trust U/s 405 & 406 of Indian Penal Code.

8. 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 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”

9. The appellant is a Government of Kerala undertaking and is running under loss. Though the learned Counsel for the respondent pointed out that the two page extracts of the balance sheet cannot be accepted as a proof of financial difficulties, it would establish the fact that the appellant was running under loss. The

learned Counsel for the appellant also pointed out that the damages for the period 03/2020 and 04/2020 amounting to Rs.1,26,129/- is waived by the respondent authority in view of the Covid-19 lockdown. Considering all the above facts and circumstances the appellant is entitled for some relief with regard to damages U/s 14B of the Act.

10. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 75% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified, and the appellant is directed to remit 75% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer