



सत्यमेव जयते

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

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

(Monday the 06th day of December, 2021

APPEAL No.690/2019

Appellant

M/s. Kerala Agro Industries Corporation
'Kissan Jyothi'
Thiruvananthapuram – 695 023.

By M/s. Menon & Pai

Respondent

The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Nitha. N.S.

This case coming up for final hearing on
06/09/2021 and this Tribunal-cum-Labour Court on 06/12/2021
passed the following:

ORDER

Present appeal is filed from order No. KR/ TVM/
2985/PD/2019-20/2592 dt. 08/08/2019 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

04/2017 to 10/2018. The total damages assessed is Rs. 1,61,793/-.

2. The appellant is a public sector undertaking jointly promoted by Government of India and Government of Kerala. The appellant establishment was facing severe financial difficulties for the last so many years. As a result there was slight delay in payment of wages to the employees and in turn there was slight delay in remittance of provident fund contribution. The appellant received a notice from the respondent alleging delay in remittance of contribution for the period 04/2017 to 10/2018. The respondent also provided an opportunity for personal hearing on 23/07/2019. The appellant attended the hearing and pleaded financial difficulties. However the respondent issued the impugned order without taking into account the submissions made by the appellant. The copy of the impugned order is produced and marked as Annexure A1. The accumulated loss of the appellant company for the year ending 31/03/2013 was Rs.1360.60 lakhs and for the year ending 31/03/2017 the accumulated loss was Rs.1330.11 lakhs and for the year ending 31/03/2018 the accumulated loss was Rs. 1299.26 lakhs. The annual reports for the period from 31/03/2013 to 31/03/2019 are produced and marked as Annexure A2 series. Damages are in the nature of penalty and

penalty is imposed only when there is a willful or deliberate delay on the part of the employer in remitting the contribution. The respondent failed to consider whether there is any willful delay on the part of the appellant in delaying remittance of contribution. The respondent failed to exercise his discretion available under Sec 14B as well as Para 32A of EPF Scheme. In **RPFC Vs SD College Hoshiarpur**, 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 **Mcleod Russel India Ltd Vs RPFC**, AIR 2015 SC 2573 and in **Assistant PF Commissioner EPFO and Another Vs Management of RSL Textiles India Pvt Ltd** , 2017 (3) SSC 110 the Hon'ble Supreme Court held that the presence of mensrea or actus reus would be a determinative factor in imposing damage U/s 14B has also the quantum thereof since it is not inflexible that 100% of the arrears has to be imposed in all cases.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The establishment failed to pay statutory dues in time for the period from 03/2017 to 10/2018. The delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32 A of EPF Scheme. Accordingly a summons

dt.19/06/2019 was issued to the appellant to show cause why damages U/s 14B 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. The representative did not dispute the delay statement send along with the summons. The representative only submitted that the delay in remittance was due to financial crisis. The appellant failed to produce any document to substantiate their claim of financial difficulties. The delay In remittance includes the contribution collected from the salary of the employees. The period of delay is upto 372 days which cannot be called as a slight delay. The appellant never sought time to produce records before the respondent authority. The Balance Sheet of the establishment which are only produced now shall not be relied upon since the appellant failed to produce the same before the respondent authority. There was no possibility of exercising the discretion, even if it is available to the respondent authority in this case since the appellant failed to substantiate their claim of financial difficulties. In **Chaiman, SEBI Vs Sreeram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of civil Act . Penalty is attracted as soon as the contravention of the statutory

obligation as contemplated by the Act and the regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant.

4. The only dispute in this appeal is with regard to the reason for delayed remittance of provident fund contribution. According to the learned Counsel for the appellant, the appellant establishment was in real financial constrains for the last so many years. He produced the annual reports of the appellant establishment for 31/03/2013 to 31/03/2019. The learned Counsel for the appellant pointed out that the accumulated loss during all these years were more than 10 crores. The appellant delayed payment of wages and consequently there was delay in remittance of provident fund contribution. There is no proof that wages to the employees are delayed during the relevant point of time. Further the documents now produced in the appeal would generally prove that salary of the employees were paid in time. The learned Counsel for the respondent vehemently argued that the documents now produced by the appellant shall not be accepted as evidence, as these documents were not produced before the respondent authority and proved before him. The Hon'ble Supreme Court of India in **Khandesh Spinning and Weaving Mills** case, 1960 (1) LLJ 548 SC held that the

correctness of figures as shown in the balance sheets are to be established by proper evidence in court by those responsible for preparing the balance sheet or by other competent witnesses. Mere statements in balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. Citing various decisions of High Courts and also the Hon'ble Supreme Court the learned Counsel for the appellant argued that there shall be intentional and deliberate delay while levying damages U/s 14B of the Act. He cited the following decisions.

- 1) **Shanty Garments Vs RPFC, 2003 (1) CLR 228 (Mad)**
- 2) **RPFC Vs Harrisons Malayalam Ltd, 2013 (3) KLT 790**
- 3) **Bhojaraj Textile Mills Vs Presiding Officer EPF Appellate Tribunal New Delhi , 2020 LLR 194**
- 4) **M/s Sreekamakshy Agency Pvt. Ltd Vs Employees PF Appellate Tribunal, W.P(C) No. 10181/ 2010.**
- 5) **Elton Tea Estate Ltd Vs RPFC and Another, W.P.(C) No. 21504 of 2010.**
- 6) **Standard Furnishing Vs Registrar EPF Appellate Tribunal 2020 (3) KLJ 528.**

All the above cited cases relied on the decision of the Hon'ble Supreme Court in **Mcleod Russel India Vs RPFC**, 2014 (15) SCC 263 and **The Assistant PF Commissioner EPFO and Another Vs Management of RSL Textiles India Pvt Ltd**, 2017 (3) SCC 110.

5. The Hon'ble Supreme Court of India reexamined 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”

6. In view of the above decision the financial difficulties of the appellant establishment is required to be examined independent of mensrea to decide whether the financial difficulties actually contributed to the delayed remittance of contribution. Though the learned Counsel for the respondent objected to admitting financial statements as evidence at the appellate stage, it is felt relevant to examine the financial position of the appellant establishment in the context of the claim made by the appellant. Though the relevant period for consideration is 04/2017 to 10/2018, the appellant produced the balance sheets for the years ending 31/03/2013 to 31/03/2019 to show that the appellant establishment was in financial difficulties even prior to the relevant period. The learned Counsel for the appellant relied on the accumulated loss component to argue that the appellant establishment had financial difficulties during the relevant period . It is seen that on year to year basis, the appellant establishment was in profit. For example for the year ending 31/03/2017 the appellant establishment was having a profit of 22.63 lakhs. For the year ending 31/03/2018 the appellant was having a profit of Rs.30.85 lakhs and for the year ending

31/03/2019 the appellant establishment was having a profit Rs.40.23 lakhs. As already pointed out, the profit during the relevant period will be the most appropriate consideration and not the accumulated loss while reviewing the financial status to decide whether the financial difficulties really delayed the remittance of provident fund contribution. The current assets of the appellant establishment as on 31/03/2017 was Rs.406.55 lakhs and cash and bank balance was 977.11 lakhs and salary and wages and allowances paid to the employees was Rs.309.09 lakhs. Similarly current assets as on 31/03/2018 was 391.55 lakhs and cash and bank balance was to the tune of Rs.1264.83 lakhs. Salaries and wages and allowance paid is Rs.413.05 lakhs. For the year ending 31/03/2019. The inventory was Rs.393.61 lakhs and cash and bank balance was Rs. 816.53 lakhs. Though the learned Counsel for the appellant failed to explain the documents produced and how it contributed to the delayed remittance of contribution, from a laymans' point of analysis it is clear that the delay in remittance of contribution was not at all due to the financial difficulties of the appellant establishment. The learned Counsel for the respondent pointed out that the wages and salary of the employees is seen to be paid on time from the documents produced. In absence of any evidence to the

contrary, the claim of the appellant that there was delay in payment of wages to its employees cannot be accepted. When the wages of the employees are paid, the employees' share of contribution is deducted from the salary of the employees. The delay in remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust and the appellant cannot claim that there was no intentional delay, atleast to the extent of 50 % of the total contribution. The learned Counsel for the respondent also pointed out that the delay in remittance of contribution is upto 372 days and the appellant cannot claim that such a delay of more than one year in remittance of contribution can be attributed to the financial difficulties of the appellant establishment. As already pointed out the delay in remittance of contribution is deliberate and intentional and the legislature introduce sec 14B only to curtail such tendencies by employers.

7. 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