



सत्यमेव जयते

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

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

(Monday the 11<sup>th</sup> day of April, 2022)

**APPEAL No.763/2019**  
(Old No. ATA 889 (7) 2012)

Appellant

The Chirayinkeezh Anjengo Coir  
Mats & Mattings Co-operative  
Society Ltd.,  
Muttappalam , Perunguzhi. P.O  
Thiruvananthapuram– 695 305.

By Adv. Sampath V. Toms

Respondent

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

By Adv. Ajoy P.B.

This case coming up for final hearing on  
17/02/2022 and this Tribunal-cum-Labour Court on 11/04/2022  
passed the following:

**ORDER**

Present appeal is filed from order No. KR /16803 /  
RO / TVM / PD / VK / 2012 / 6378 dt.10/08/2012 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 03/2007 to 02/2010. The total damages assessed is Rs. 3,69,234/-.

2. Appellant is a society registered under the Kerala Co-operative Societies Act, engaged in manufacture and marketing of coir products. The appellant is covered under the provisions of the Act. The respondent initiated action U/s 14B of the Act alleging delay in remittance of contribution. A representative of the appellant attended the hearing and sought time for filing written submissions along with the documents. Ignoring the contentions of the appellant the respondent issued the impugned order. The provisions of the Act is not applicable to the appellant as there is no employer and employee relationship between the society and the workers. The appellant is a co-operative of the coir workers and the total number of membership is 174. Out of 174, 164 members are workers of the society. The respondent authority violated the principles of natural justice while issuing the impugned order. Though the Secretary of the society attended the meeting on 08/08/2012 and requested for time, the respondent authority issued the impugned order without affording the appellant sufficient time to submit documentary evidence to support the claim of the appellant. The respondent authority ought to have seen that the appellant is a workers

co-operative and therefore facing acute financial crisis. The appellant is finding extremely difficult to pay even the wages. At present the appellant provides employment to 84 workers but due to heavy losses the appellant is not in a position to pay even their wages. Neither the State or Central Government is provided the working capital to the appellant establishment.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/09/2001. The appellant is a chronic defaulter. The belated payment of contribution attracts damages U/s 14B. The respondent authority therefore issued notice dt.19/07/2012 along with a detailed delay statement. The appellant was also given an opportunity for personal hearing on 08/08/2012. A representative of the appellant attended the hearing and submitted that the delay in remittance was due to the financial difficulties of the appellant establishment. The representative however admitted the delay as per the delay statement sent along with the notice. Since the representatives of the appellant did not raise any dispute other than financial constraints and no documents to support the financial constraints were produced, the respondent authority issued the impugned order. The claim of the appellant that the provisions of

the Act are not applicable to the appellant is not correct. As per Sec 16 of the Act the Act shall apply to any establishment registered under the Co-operative Societies Act or under any other law for the time being in any state relating to co-operative societies and employing 50 or more persons. Since the appellant establishment is employing more than 50 persons the provisions of the Act is applicable to the appellant establishment. In **Elson Cotton Mills Vs RPF**, the Hon'ble High Court of Punjab and Haryana held that the poor financial capacity is not a ground for not paying the provident fund contribution of the employees who are also poor persons. No evidence of any financial crisis is produced by the appellant either before the enquiry authority or in this appeal. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 held that the financial problems are not relevant explanation to avoid liability for default.

4. Present appeal is filed before the EPF Appellate Tribunal as ATA No. 889(7)2012 and the same was admitted vide order dt. 27/11/2012. Recovery of the amount involved in impugned order is stayed subject to deposit of Rs.1.5.lakhs with the respondent within 4 weeks from 27/11/2012. The appeal was transferred to this Tribunal and notice was issued to the appellant as well as

respondent. On 26/02/2020 the appellant was represented in these proceedings and submitted that no amount was deposited by the appellant as directed by the EPF Appellate Tribunal. There after the matter was posted on various dates and there was no representations from the appellant. Since the assessment is for the period 03/2007 to 02/2010 and the impugned order is dt. 10/08/2012, the matter is taken up for final hearing on 17/02/2022 with a direction to the appellant to file argument notes if any within 3 weeks from 17/02/2022. No argument notes were filed by the appellant.

5. The appellant establishment delayed remittance of contribution for the period 03/2007 to 02/2010. The respondent therefore initiated action for levy of damages U/s 14B of the Act. Notice was issued along with a detailed delay statement. The appellant was also given an opportunity for personal hearing on 08/08/2012. Representative of the appellant attended the hearing and pleaded financial difficulties for delayed remittance of contribution. However the appellant failed to produce any supporting documents to substantiate the claim of financial difficulties. The respondent authority therefore issued the impugned order.

6. In this appeal the appellant pleaded financial difficulties as a ground for delayed remittance of contribution. It is also pleaded that the appellant was not given adequate opportunity to file written statement along with documentary evidence to support the claim. The learned Counsel for the respondent denied the claim of the appellant that their request for time was rejected by the respondent authority. According to the learned Counsel for the respondent the appellant admitted the liability before the respondent authority and pleaded financial difficulties as the reason for delayed remittance of contribution. However the appellant failed to produce any documents to support the claim. The appellant failed to produce any documents to support the financial difficulties in this appeal also. 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 **Elston Tea Estates Ltd Vs RPFC**, W.P.(C)

No. 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. According to the appellant the delay in remittance of contribution was not intentional.

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 actusreus is not an essential ingredient for imposing penalty/damage for breach of civil obligations/liabilities”.

9. The appellant is a Co-operative of the Coir workers. Though no documents were produced, it felt that the appellant can be given some accommodation in view of the nature of business and being in the Co-operative sector and also in the special circumstances of the cases.

10. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that the interest of justice will be met, if the appellant is directed to remit 80% of the damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 80% of the damages.

Sd/~

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