



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

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

(Friday the 01st day of April, 2022)

APPEAL No.767/2019
(Old No. ATA. 914(7)2012)

Appellant

M/s. Travancore Plywood Industries Ltd
P.B.No.3, Punalur P.O
Kollam~ 691 305.

By Adv. S. Ajith

Respondent

The Regional PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on 25/11/2021
and this Tribunal-cum-Labour Court on 01/04/2022 passed
the following:

ORDER

Present appeal is filed from Order No. KR/KLM/ 622 /
PD/2012-13/4032 dt.13/07/2012 assessing damages U/s 14B
of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) for

belated remittance of contribution for the period 07/2000 02/2011. The total damages assessed is Rs. 96,65,708/-.

2. The appellant is a government company incorporated under the Companies' Act 1956. The company was declared sick and the activities of the appellant have been stopped since 2002 based on GO No. 100/02/ID dt. 05/10/2002. There is no activities in the company thereafter. The appellant was referred to BIFR and BIFR found that it is not viable to revive the company. Accordingly the appellant company was wound up as per the order of Government of Kerala dt.19/01/2011. The Ministry of Corporate affairs Government of India accepted the closure and struck of the name of the company from the Registrar of Companies. Government of Kerala transferred all the assets and liabilities of the wound up company to M/s Kerala Infrastructure Development Corporation. After the closure of the appellant Company in 2002 all the employees left on VRS and their wage arrears and terminal benefits were already settled. The contributions towards provident fund has also been settled by Government of Kerala. The appellant received a show cause notice from the respondent to show cause as to why damages shall not be levied from the appellant for belated remittance of

contribution. The impugned order is not sustainable for violation of principles of natural justice. The respondent mechanically imposed damages as provided under Para 32A of EPF Scheme. The respondent authority failed to exercise its discretion available to him U/s 14B of the Act and also Para 32A of EPF Scheme. The respondent has no case that the appellant purposefully evaded payment of contribution and there is mensrea warranting imposition of damages. The respondent failed to consider the financial constrains of the appellant establishment during the relevant point of time. Though a composite notice was issued by the respondent, the appellant remitted the interest demanded by the respondent organization. The respondent failed to consider the provisions of Sec 17B of the Act. The respondent ought to have looked into the position whether the appellant has acquired assets and the value of assets are equal to the amount allegedly due to the organization.

3. The respondent filed counter denying the above allegations. The appellant is a chronic defaulter. The appellant delayed remittance of contribution for the period 03/1990 to 06/2000. The respondent therefore issued a notice along with the delay statement directing the appellant to show cause why

damages shall not be levied for belated remittance of contribution. A representative of the appellant attended the hearing and submitted that an amount of Rs.4,20,239/- recovered from the treasury account of the appellant is not reflected in the statement send along with the notice. The representative produced the copy of the challan for having recovered the amount. The respondent organization prepared a revised statement showing an outstanding damage and interest of Rs.1,68,76,630/-. On 05/12/2011 a representative of the appellant attended the hearing and informed that the appellant establishment is closed vide order dt. 19/01/2011 and Government of India Ministry of Corporation Affairs order dt. 18/11/2011. Government of Kerala subsequently transferred all the assets and liabilities of the appellant establishment to Kerala Industrial Infrastructure Development Corporation. On 20/01/2012 the representative of the appellant produced an order of the Hon'ble High Court of Kerala in W.P.(C) No.17764/2005 dt. 21/11/2011. It was a case where the Recovery Officer of EPFO recovered an amount of Rs.1,38,31,295/- through bank attachment of RIAB when RIAB was appointed as Fund Manager of appellant establishment. The

Hon'ble High Court dismissed the writ petition as infructuous. Taking into account the submissions made by the appellant, the respondent assessed an amount of Rs.1,40,04,438/- as damages and interest. The appellant filed Appeal No. 845 (7)/2004 before the EPF Appellate Tribunal New Delhi. The EPF Appellate Tribunal modified the order and remanded the matter to the respondent authority with a direction to assess the liability at the rate of 22%. As per the direction of the appellate authority the respondent authority assessed the amount of Rs.8,16,533/-towards 7Q and Rs.45,25,254/- as damages U/s 14B. True copy of the order dt. 27/05/2011 is produced and marked as Annexure R1(b). The appellant remitted the said amount on 10/06/2011. A true coy of the confirmation letter dt. 10/06/2012 is produced and marked as Annexure R1(c). In the meanwhile the appellant also remitted Rs.4,20,239/- towards damages on 04/08/2006. A copy of the chellan is produced and marked as Annexure R1(d). The Recovery Officer of the respondent organization attached the treasury account of the appellant on 05/05/2006 which was challenged in W.P.(C) No. 17764/2005. It is also seen that the Recovery Officer recovered an amount of Rs.1,38,31,295/- from the treasury account and

since the W.P.(C) No.16209/2006 was pending consideration the amount was not accounted. Later the amount was accounted by the respondent organization. The EPF Appellate Tribunal dismissed the appeals preferred by the Secretary RIAB as well as Kerala Industrial Revitalization Fund Board. The review application filed also was dismissed by the Tribunal. The Writ Petition No. 17764/2005 filed before the Hon'ble High Court of Kerala was also dismissed as infructuous. A copy of the said order is produced and marked as Annexure R1(k). It is seen from the records that the appellant remitted the re-assessed damages and interest vide Annexure RI(m) and Annexure R1(n). After adjusting all the amounts recovered from the appellant as well as remitted by them there is a difference of Rs.7,18,208/- to be paid by the appellant . There is a confusion regarding the accounting of Rs.4,20,239/- claimed to have been remitted by Annexure R1(d) dt. 05/01/2006. After taking into account all the assessments recovery and remittance there is a shortage of Rs.2,71,808/- to be paid by the appellant to the respondent organization . Except for a dispute centering around Rs.2,71,808/- due to the organization or of Rs.1,48,431/-

shown as excess. There is absolutely nothing to be agitated in this appeal.

4. The appellant establishment is chronic defaulter in remittance of contribution, interest and damages. The respondent organization has taken coercive action for recovery of the outstanding dues damages and interest. Huge amounts were also recovered but the same was not reconciled properly. In the meanwhile there were also appeals filed before the EPF Appellate Tribunal, New Delhi and writ petition filed before the Hon'ble High Court of Kerala. In the appeal against assessment of damages, the EPF Appellate Tribunal, New Delhi interfered and remanded the matter to the respondent authority to assess the liability at the rate of 22%. The respondent authority re-assessed the damages and interest and recovered the same from the appellant establishment .

5. In this appeal the respondent filed an elaborate written statement explaining the compliance status of the appellant establishment for the period from 1990 till date. The respondent has done a lot of research into the compliance position, compiled the data and also the corresponding orders, challans and the judgments of the Hon'ble High Court as well

as the order of the EPF Appellate Tribunal. The effort taken by the respondent in this regard is required to be appreciated.

6. According to the appellant the appellant establishment is closed by Government of Kerala and the name of the appellant company is struck of the register vide order dt. 18/11/2011 by Ministry of Corporate Affairs, Government of India. The assets and liabilities of the closed establishment are transferred to M/s. Kerala Industrial Infrastructure Development Corporation. In spite of the closure of the appellant establishment the dispute regarding the liability as per the impugned order was pending for quite a long time. Now after compiling all the available data and information the respondent confirmed that the only amount that may be outstanding as on date is only Rs. 2,71,808/- For the sake of brevity I am not repeating the details of assessments, the orders of the EPF Appellate Tribunal and Hon'ble High Court of Kerala and the consequential remittance and recovery made by the respondent organization. The fact remains that as against the impugned order only an amount of Rs. 2,71,808/- is outstanding.

7. Being a closed Government Company, it is not correct to penalize the appellant establishment any further U/s 14B of the Act.

8. Considering the facts, circumstances pleadings and evidence in this appeal, I am inclined to hold that the appellant is not liable to remit any further amount as per the impugned order.

Hence the appeal is partially allowed holding that the amount already recovered and adjusted towards the damages U/s 14B of the Act would satisfy the requirement of the impugned order, and no further amount of damages as per the impugned order is recoverable from the appellant .

Sd/-

(V. Vijaya Kumar)
Presiding Officer