



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer  
(Thursday the 28<sup>th</sup> day of October,2021)

**APPEAL No.789/2019**

Appellant : M/s. BPL India Limited,  
Koothupatha  
Coimbatore Main Road,  
Palakkad – 678 007

By M/s. Menon & Pai Associates

Respondent : The Assistant PF Commissioner  
EPFO, Sub-Regional Office  
Eranhipalam . P.O  
Kozhikode-673 006.

By Adv. Dr.Abraham P.Meachinkara

This case coming up for final hearing on  
23/07/2021 and this Tribunal-cum-Labour Court on  
28/10/2021 passed the following:

## **ORDER**

Present appeal is filed from Order No. KR / KKD / 2260 / DO.PKD / 14-B / 2019 /1914 dt. 02/12/2019 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 01/08/2011 to 28/2/2012. The total damages assessed is Rs.36,80,520/-.

2. Appellant is company registered under Companies Act. The appellant company is engaged in the manufacture hermetically sealed of precision panel meters for the defence forces. The appellant company expanded into various activities such manufacturing of medical equipments, such as electrocardiograph machines, colour television, refrigerators, batteries etc. After liberalization in 1991, the appellant company was facing increased competition from

other companies. The joint venture formed with M/s Sanyo Japan also ended up in a failure. Now the appellant company is trying to make a re-entry into the appliances market by manufacturing smaller electronic products. The appellant establishment was regular in compliance. The financial position of the appellant company declined from year 2000 onwards. The appellant company is facing cash flow constrains for the last several years. During the financial year 2011-2012, the revenue from operations come down to Rs. 79.37 crores from Rs. 92.88 crores during the financial year 2010-2011. True copy of the annual report for 2011 is produced and marked as Annexure A1. The true copy of the annual report for the year 2011-2012 is produced and marked as Annexure A2. From Annexure A2 it can be seen that the profit before exceptional and extra ordinary item and tax is Rs.54.03 crores which includes Rs.75.98 crores other

income mainly from the profit on sale of some noncore assets of the company to settle the long term liabilities with higher interest burden which is evident from the balance sheet item No. 3(a). In a nutshell, appellant company made an operational loss of Rs.21.95 crores during the financial year 2011-2012. The business of the appellant establishment was confirmed to Health Care and Printed Circuit Board. Due to financial constrains these businesses also suffered. In order to preserve the health care business and improve cash flow the same was transferred into a joint venture company with M/s Goldman Sachs as another partner. All the employees of the Health Care Division of the appellant at Palakkad, Bangalore and its branches were also transferred to the new company during August 2014. Due to these transfers there was delay in remittance of provident fund contribution and the same was paid during March 2014.

Even during the financial year 2013-2014 the revenue from operation has come down to 48.39 crores from 99.32 crores during 2012-2013. From the profit and loss account for the year 2013-2014, the profit before exceptional and extraordinary items and tax is Rs.4.29 crores which includes 13.86 crores other income resulting in an operational loss of Rs. 9.57 crores. True copy of the annual report for the year 2013-2014 is produced and marked as Annexure A3. The respondent authority issued a notice dt. 05/09/2019 proposing to levy damages U/s 14B for belated remittance of contribution. A representative of the appellant attended the hearing and explained the reasons for delay. A written statement was also filed by the appellant company. A true copy of the written statement dt. 27/11/2019 is produced and marked as Annexure A4. Without considering any of the points raised in the written statement the respondent issued

the impugned order. The respondent authority has enough discretion under Sec 14B of the Act and Para 32A of EPF Scheme to reduce or waive the damages in the circumstances explain to him. However he failed to exercise his discretion.

In **RPFC Vs SD College Hoshiarpr**, 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 percentage of damages. The Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Ltd**, 2013 (3) KLT 790 held that the respondent authority has to exercise discretion by looking at mitigating circumstances which includes financial difficulties projected by the employer. The Hon'ble High Court also held that existence of mensrea and actus reus to contravene statutory provisions must also be held to be a necessary ingredient for levy of damages or the quantum

thereof. In **Mcleod Russel India Vs RPFC**, AIR 2015 SC 2573 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, also the quantum thereof. The principle was again reiterated by the Hon'ble Supreme Court in **Assistant PF Commissioner, EPFO and Another Vs Management RSL Textile India Pvt. Ltd**, 2017 (3) SCC 110. The delay in remittance of contribution was due to reasons beyond the control of the appellant and hence the respondent ought not have penalized the appellant to the maximum extend.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant committed default in remitting due for the period from 01.08.2011 to 28.02.2012.

When there is delay in payment of contribution the appellant is liable to pay damages for belated remittance of contribution. The respondent therefore issued a show cause notice dt. 05/09/2019 U/s 14B of the Act, to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also enclosed alongwith the notice. The appellant was also given an opportunity for personal hearing on 30/10/2019. An authorized representative of the appellant attended the hearing. The appellant admitted the delay in remittance of dues. He also submitted a written statement explaining the reasons for belated remittance of contribution. According to him, the delay in remittance was due to financial constrains of the appellant establishment. The respondent authority concluded hearing and issued the impugned order after taking into account the circumstances explained by the



appellant. Financial hardship cannot be taken as a ground for waiving or reducing damages. The Hon'ble High Court of Gujarat in **C.P. Kotak Balmandir Vs RPFC**, SCA No. 3749/2011 held that mere existence of financial hardship is not sufficient explanation for delay in payment, unless it is also shown that no salaries were paid to the employees and consequently no deductions were made during the relevant period or that much of fund to be remitted were not available on the due dates. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India**, AIR 1998 SC 688 held that bad financial condition is no defense for delayed remittance of provident fund dues. In **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 the Division Bench of the Hon'ble High Court of Kerala observed that the employer is bound to pay contribution under the Act every month voluntarily

irrespective of the fact that wages have been paid or not. The Hon'ble Supreme Court in **Chairman SEBI Vs Sri Ram Mutual Fund and Another** Civil Appeal No. 9523-9524 /2003 held that mensrea is not an essential ingredient for contravention of the provisions of the civil Act. Penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established, and therefore, the intention of the parties committing such violations becomes immaterial. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the reason for the introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds, most often with the ulterior motive of misutilizing not only their own but also the employees contribution . The predominant objective of Sec

14B is to penalize the defaulter so that he may be thwarted or deterred from making any defaults.

4. There is no dispute regarding the fact that there was delay in remittance of contribution by the appellant during the period 01/08/2011 to 28/02/2012. The main ground pleaded by the learned Counsel for the appellant for belated remittance of contribution is the financial difficulties of the appellant establishment. The appellant produced the profit and loss account for the year 2010-2011, 2011-2012, and 2012-2013 to substantiate their claim. The learned Counsel for the respondent relying on the decision of the Hon'ble Supreme Court of India in **Aluminium Corporation Vs Their Workmen**, 1964 (4) SCR 429 argued that these documents now produced by the appellant may not be considered for reducing or waiving damages of the

appellant establishment. According to the Hon'ble Supreme Court in the above case, mere statements in the balance sheets regarding current assets and current liabilities cannot be taken as sacrosanct. The figures as shown in the balance sheets are required to be established by proper evidence in court, by those responsible for preparing the balance sheet or other competent witnesses. According to the learned Counsel for the appellant, though the Profit and Loss account will show profit before provisions and taxation, the appellant company was still under loss after making all the statutory adjustments. It is seen that the balance sheet and profit and loss account produced by the appellant pertains to the Corporate Office, which includes various units of the appellant company. It is not clear from the pleadings whether the provident fund compliance in respect of all the units are made with the respondent office at Calicut. If it is

not so, the balance sheet and profit and loss account will only be an indicative evidence as it will not be clear whether unit at Palghat is running on profit or was under loss during the relevant point of time. Further it is seen from the documents now produced by the appellant that the appellant paid salaries and wages in time. The payment of provident fund contribution is also reflected in these documents produced by the appellant. During the year ending 31/03/2010, the appellant establishment paid salary and wages to the tune of Rs. 12,27,30,010/- and during the year 2011 they paid salary and wages to the tune of Rs. 12,78,73,210/- and for the year ending 31/03/2012 also it is seen that the appellant has paid an amount of Rs.15,25,49,926/- towards salaries and wages. It is also seen the revenue from operations increased from 79,37,60,178/- for the year ending March 2012 to Rs. 99,32,50,358/- for

the year ending 31/03/2013. Even on a laymans understanding of the evidence now produced by the appellant, it is clear that the financial constrains as explained by the learned Counsel for the appellant cannot be a ground for delayed remittance of provident fund contribution. Further the learned Counsel for the respondent also pointed out that 50% of the contribution delayed by the appellant belongs to the employees' share of contribution deducted from the salary of the employees. As already pointed out the salary of the employees were paid in time by the appellant as per the documents produced in these proceedings. When salaries are paid the employees' share of the contribution is deducted from the salary of the employees. Non-remittance of employees' share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having

committed an offence of breach of trust, the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the total contribution. The learned Counsel for the respondent also relied on the judgment of the Division Bench of the Madurai Bench of (Mad) High Court dt. 23/02/2021 in **M/s. Ramanathapuram District Corporation Printing Works Ltd Vs. Employees Provident Fund Appellate Tribunal and Another**, Writ Appeal ( MD) No. 525 of 2012 to argue that the Tribunal cannot interfere with the assessment of the respondent authority as all the relevant circumstances are considered by the respondent authority before issuing the impugned order. On a perusal of the impugned order it is seen that the respondent authority has not considered the relevant circumstances leading to the assessment of damages U/s 14B and therefore the decision referred to by

the learned Counsel cannot be relied on for the purpose of deciding this case. Further it is seen that the Division Bench of the Hon'ble High Court of Madras decided the above matter in view of the fact that the “appellant failed to adduce any evidence to enable the authorities to take eminent view by adducing any convincing evidence”. The learned Counsel for the appellant relied on the decision of the Division Bench of the Kerala High Court in **Harrison Malayalam Case** (Supra) to argue that the financial constrains of the appellant establishment will have to be considered while deciding the quantum of damage U/s 14B of the Act. It is seen that the respondent authority approached the Hon'ble Supreme Court from the above decision in SLP No. 21174/2015. The Hon'ble Supreme Court vide its judgment dt. 06/05/2016 retained the quantification of damages. However the question of law in



the above decision is kept open to be decided in an appropriate case.

5. Considering all 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 70% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified, and the appellant is direct to remit 70% of the damages U/s 14B of the Act .

Sd/-

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