



सत्यमेव जयते

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

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

(Wednesday the 28th day of April , 2021)

**Appeal Nos. 64/2018 &
245/2018**

- Appellant : 1. M/s. Goldview Vyappar Ltd.
Peermedu
Idukki
Pin – 685533
2. M/s. Hope Plantations (GMs Office)
Peermedu
Idukki
Pin – 685531

By Adv. V.B. Hari Narayan

- Respondent : The Assistant PF Commissioner
EPFO, Sub-Regional Office
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This appeal came up for hearing on 15/03/2021 and this Industrial Tribunal cum Labour Court issued the following order on 28/04/2021.

ORDER

Appeal No. 64/ 2018 is filed from Order No. KR / KTM / 395-A / APFC / Penal Damages / 2017 / 1984 dt. 08/12/2017 assessing damages U/s 14B of the EPF & MP Act (hereinafter referred to as 'the Act) for belated payment of provident fund contribution for the period from 10/2000 to 08/2009 and 10/2009 to 10/2015 (remittance made between 12/01/2001 and 31/10/2016.) The total damages assessed is Rs. 48,67,538/-.

2. **Appeal No. 245/2018** is filed from order No. KR / KTM/395/A/APFC/ Penal Damages/14B / 2018-19 / 1029 dt. 10/07/2018 assessing damages U/s 14B of the EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 06/2014 to 02/2017 (remittance of EPF dues between 12/03/2016 and 31/3/2018) The total damages assessed is Rs. 60,615/-.

3. Both the appeals are filed on common issues and therefore it is heard and disposed of by a common order.

4. The appellant M/s. Goldview Vyapaar Pvt. Ltd is a Company registered under the provisions of Companies Act

1956 and engaged in plantation business. The appellant company acquired the plantation division at Peermade called 'Hope Plantations' which consists of tea estates having an extent of 4000 acres and having 1700 permanent workers and 800 casual workers apart from 100 supervisory and managerial staff. The appellant was regular in compliance ever since it has taken over the management of the estates from 2011 onwards. However there was delay in remittance of provident fund contribution for the year 2000 to 2008. In view of non-payment of contribution the respondent attached the entire estates of the appellant establishment and initiated action for sale of 530 acres of land belonging to the company for realization of provident fund dues. After a series of litigation, the Hon'ble High Court in Writ Appeal No. 1197/2009 vide judgment dt. 14/08/2009 permitted the company to pay up-to-date dues towards provident fund contribution in 6 monthly installments starting from 15/10/2009 onwards. The company was granted 24 installments to clear the dues U/s 7Q. The Hon'ble High Court allowed the appellant, to move Central Board of Trustees for waiver of damages amounting

to Rs.1,27,90,800/- for the period from 2000 to 2007 making it clear that no coercive action shall be taken till the CBT takes a final decision. The appellant remitted the provident fund dues as directed by the Hon'ble High Court. The interest U/s 7Q has also be paid and CBT was moved for waiver of damages as directed by the Hon'ble High Court. The CBT as per their order dt.25/11/2015 rejected the request for waiver. The above order was challenged before the Hon'ble High Court of Kerala in WP(C) No. 17176/2016 and obtained a interim stay of recovery subject to deposit of Rs.20 lakhs in two weeks time. The above condition has been complied with and the Writ Petition is still pending. The respondent thereafter issued a notice dt.04/11/2016 for belated remittance of contribution for the period from 10/2000 to 08/2009 and 10/2009 to 10/2015. The appellant submitted a reply that the default in payment of contribution was not willful and was on account of financial constraints and hardships faced by the appellant. In the light of decision of High Court of Kerala in ***RPFC Vs Harrisons Malayalam Ltd***, 2013(3) KLT 790 the levy of damages U/s 14B is not an automatic process, and

financial hardship is certainly a matter for consideration of the 14B authority. The respondent issued the impugned order ignoring the submissions made by the appellant. In the statement furnished by the respondent the amount for the period from 10/2000 to 12/2007 is Rs.1,19,608/- as against the dues of Rs. 30,01,191/-. After a lapse of more than 10 years, the respondent cannot raise a fresh demand for damages in respect of the same period which is covered by the judgment in Writ Appeal No. 1197/2009. A copy of the recovery notice dt. 14/10/2008 issued by the respondent is produced and marked as Annexure A1 which will clearly show that the damages levied for the period 03/2000 to 09/2006 is Rs.1,19,608/-. A copy of the judgment in Writ Petition No. 1117/2018 is produced and marked as Annexure A2.

5. The respondent filed counter denying the above allegations. The claim of the appellant that they were remitting contribution in time since the appellant took over the management of the estate in 2011 is completely false and denied. In 2002 all these estates were in default therefore action was initiation for assessing dues U/s 7A of

the Act. By separate proceedings damages u/s 14 B and interest under 7Q were initiated. Penal damages amounting to Rs.1,19,608/- for the wage month from 03/2000 to 08/2001 was imposed on the appellant establishment. A true copy of the penalty order dt. 14/05/2002 along with the calculation sheet are produced and marked as Annexure R1. Annexure R1 covered the delay payment of wage months 03/2000 to 08/2001 only. The appellant filed WPC No. 12313/2009 before the Hon'ble High Court of Kerala seeking installment facility to pay dues, damages and interest, which was dismissed vide judgment dt. 25/05/2009. A true copy of the judgment is produced and marked as Annexure R2. Against Annexure R2 judgment the appellant filed Writ Appeal No. 1197/2009 before the Division Bench of the Hon'ble High Court of Kerala and by the judgment dt. 14/08/2009 the appellant was granted installment facility to payment arrears and interest and was given liberty to move CBT for waiver of penal damages. A copy of the judgment is produced and marked as Annexure R2. The appellant submitted an application dt. 09/09/2009 before the CBT for waiver of

damages and also filed W.P(C) No. 19934/2013 and 28839/2013 before the Hon'ble High Court of Kerala seeking a direction to the CBT to dispose of the application. The Hon'ble High Court directed the CBT to consider the application. The CBT by its order dt. 08/01/2016 rejected the application. A true copy of the order 08/01/2016 passed by the CBT is produced and marked as Annexure R4. Pursuant to Annexure R4 order rejecting the appellants application, the recovery officer EPFO vide letter dt. 21/04/2016 initiated action for recovery of damages. A copy of the letter is produced and marked as Annexure R5. The appellant filed WP(C) No. 17176/2016 before the Hon'ble High Court of Kerala challenging the action of the Recovery Officer.

6. Subsequently in respect of belated remittances not covered by Annexure R1, the respondent has issued the impugned order imposing penal damages on the appellant. A true copy of the calculation sheet in respect of the impugned penalty order is produced and marked as Annexure R6. The belated remittance covered by Annexure R2 and impugned orders are entirely different and

absolutely no overlap between the two penalty orders. The appellant is attempting to mislead contenting that the impugned order covers the period covered by Annexure R2 order without appreciating that the belated payment covered by the two penalty order are entirely different as evidenced by the calculation sheet in respect of the two penalty orders. The delayed remittance have been penalized in two separate proceedings under Annexure R2 and the impugned order since the appellant made part payments in respect of contributions payable for the very same wage month on different dates. A comparison of the calculation sheet accompanying Annexure R2 and R6 would make it clear that the appellant has no case. The appellant failed to produce any evidence what so ever to establish the financial difficulty before the respondent authority. The appellant has none stated the circumstances, causes, and factors resulting in the so called financial difficulty or any other mitigating circumstance.

7. The appellant has taken over the management of various estates owned by hope plantations. There was delay in remittance of contribution and the respondent therefore

issued summons to the appellants to show cause why damages shall not be levied U/s 14B of the Act read with Para 32A of EPF scheme. A delay statement furnishing the details of the delay, due date, and the actual date of payment was also provided to the appellants. The appellants were also given an opportunity for personal hearing. A representative of the appellant attended the hearing and produced documents to show the remittance particulars for the period from 01/2012 to 10/2015. The representative also pleaded that the establishment could not remit the dues in time due to financial stringency and default is not willful. The appellant failed to produce any documents to substantiate their claim of financial difficulty. The learned Counsel for the appellant also narrated in detail the default of the appellant establishment and the action taken by the respondent for recovering the same. The whole action for recovery of the previous dues and interest culminated via order dt. 14/08/2009 in Writ Appeal No. 1179/2009. The appellant remitted the contribution and interest as directed by the Hon'ble High Court and also approached the CBT for waiving the damages. The Central Board of Trustees

rejected the claim of the appellant and the appellants approached the Hon'ble High Court of Kerala in W.P.(C) No. 17176/2016. The Hon'ble High Court vide order dt. 25/02/2020 again directed the Secretary, Ministry of Labour and employment to dispose of the representation given by the appellant U/s 16 (2) of the Act after hearing the petitioner as well as the authorized representation of respondent organization within a period of 2 months from the date of this receipt of this judgment. Till the disposal of the matter by the Secretary (Labour) coercive action is also kept in abeyance. From the above history of the appellant it can be seen that the appellant is a chronic defaulter and delayed remittance of contribution during the earlier periods also which culminated in levy of interest and damages.

8. The learned Counsel for the appellant also tried to interest upon this Tribunal that there was some overlap in the period of assessment in the impugned order as well as an earlier order issued by the respondent which was part of the judgment in Writ Appeal No 1197/2009. The appellant also produced Exbt P5 to substantiate his claim. However the learned Counsel for the respondent has categorically

establish through Annexure R1 and also Annexure R6 that the payments covered as per the earlier order is not included in the impugned assessment U/s 14B of the Act. Hence the claim of the appellant that there was overlap cannot be sustained.

9. The appellant claimed that the appellant establishment was under severe financial constrains during the relevant point of time. However, the appellant failed to produce any document to substantiate their claim of financial difficulties either before the respondent authority or in this appeal. However the earlier proceedings discussed above will indicate that the appellant was facing some financial constrain during the period when the earlier assessments were made. However there is no evidence to support their claim of financial difficulties during this subsequent period for which the impugned orders were issued. 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 ***SreeKamakshi Agency Pvt Ltd Vs***

EPF Appellate Tribunal, 2013 1 KHC 457 also 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 **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 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.

10. According to the learned Counsel for the respondent the appellant has no case that there was delay in payment of wages to its employees. When wages of the employees are paid the employee share of contribution is deducted from the salary of the employees. The appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Non-remittance of the employee share of contribution deducted from the salary of the employees which amounts to 50% of the total contribution is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust

the appellant cannot plead that there was no intentional delay or mensrea in belated remittance of contribution atleast to the extent of 50% of the contribution deducted from the salary of the employees.

11. The learned Counsel for the appellant submitted that their request for exclusion U/s 16(2) of the Act is still pending with the Government of India. Hence it is clarified that the decision in these appeals will be subject to any final decision taken by the Government of India as per the direction of the Hon'ble High Court of Kerala in W.P.C No.17176/2016.

12. Considering all the facts, circumstance, evidence and pleadings 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 U/s 14B of the Act.

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

Sd/-
(V. Vijaya Kumar)
Presiding Officer