



सत्यमेव जयते

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

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

(Wednesday the 5<sup>th</sup> day of January, 2022)

**Appeal No.194/2018**

Appellant : M/s. Anaswara Offset Pvt. Ltd.,  
48/2123-C,  
Perandoor Junction,  
Elamakkara,  
Kochi – 682 026.

By Adv. C.B. Mukundan

Respondent : The Assistant PF Commissioner  
EPFO, Sub-Regional Office  
Kaloor,  
Kochi – 682 017.

By Adv. S. Prasanth

This appeal came up for hearing on 23/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 05/01/2022.

**ORDER**

Present appeal is filed from a composite order assessing damages and interest.

Present appeal is filed from Order No. KR / KCH / 15082 / Damages / 14B / 2018 / 3901 dt. 07/06/2018 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for delayed remittance of contribution for the period 01/04/1996 to 31/03/2014. (The remittance period of 09/97 to 07/2008 ). The total damages and interest assessed is Rs.2,03,563/-.

2. The appellant is a Private Limited company registered under Companies' Act, engaged in the business of commercial printing and binding works. The appellant is covered under the provisions of the Act and was regular in compliance. The appellant received a summons dt.11/04/2014 on 23/04/2018 proposing to levy damages for the period from 09/97 to 07/2008. True copies of the summons along with the statement of accounts and postal acknowledgement card are produced and marked as Annexure A2. The notice prepared by respondent's office four years back was received by the appellant on 23/04/2018. The appellant through a representative attended the hearing on 03/05/2018 and submitted a written objection. According to the appellant, the remittances were made in time and even if there are some delayed payments there would have been sufficient reasons such as bank holidays strikes,

procedural delays, delayed crediting the amount etc which are not fault of the appellant. A true copy of the written objection is marked as Annexure A3. The appellant issued notice after a long period of 11 years of default. Hence the appellant could not produce any records for the period for which the damages and interest was proposed to be assessed. The appellant also pleaded that the financial position of the appellant establishment was very bad due to the shortage of work and delay in getting payment from the customers. The appellant requested for copies of the records relied on by the respondent so that the appellant could explain the delay in remittance of contribution. The impugned order is issued in a mechanical manner. The respondent failed to follow the circular dt.29/05/1990 issued by the headquarters of the respondent organization. The above circular was upheld by the Hon'ble High Court of Delhi in **Systems Stamping and others Vs Madhya Pradesh PF Appellate Tribunal**, 2008 LLR 485. The respondent authority failed to exercise his discretion available U/s 14B of the Act and Para 32A of EPF Scheme. The respondent authority has no power to levy interest U/s 7Q as he is not authorized to levy interest by the Government. The Hon'ble High Court of Bombay in **KT Rolling Mills Vs RM Gandhi**, 1994 (1) LLJ 66 held that the authorities

under various statutes are bound to take action against a defaulter of law within a reasonable period. It is settled position of law that damages being penal in nature cannot be levied in a mechanical manner. There is no willful defiance of law and contumacious conduct on the part of the appellant warranting levy of damages and interest. There was no mensrea in the belated remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 09/1997 to 07/2008. The respondent issued summons to the appellant on 16/04/2014 which is returned by the postal authority with the endorsement "undelivered". Subsequently the notice was delivered to the appellant through an Enforcement Officer of the respondent's Office. The appellant filed a reply to the notice on 20/04/2018. If there is any delay on the part of the bank in crediting the contribution paid by the appellant, then the bank only will be penalized and not the appellant. However it is the responsibility of the appellant to prove that they remitted the dues within the stipulated due date. In this case, the appellant failed to produce any such evidence. If there is any delay in the assessment of

penal damages, the actual beneficiary of the delay is the appellant himself. The Hon'ble Supreme Court of India in **Hindustan Times Ltd., Vs Union of India and others**, 1998 (2) SCC 242 held that

“ There is no period of limitation prescribed by the legislature for initiating action for recovery of damages U/s14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings U/s 14B would be taken; mere delay in initiating action U/s 14B cannot amount to prejudice inasmuch as the delay on the part of the Department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. In fact, in cases U/s 14B if the Regional PF Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been able to use these monies for his own purposes or for his

business. In our opinion, it does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers U/s 14B, he has suffered loss. On the other hand, the defaulter has obviously had the benefit of the “boon of delay” which “is so dear to debtors”.

4. Financial condition of the appellant cannot be a ground for delayed deposit of contribution. The Hon'ble Supreme Court of India in **Hindustan Times Ltd (supra)** held that the financial position of the establishment cannot be a defense to escape the liability U/s 14B of the Act. The date of presentation of the cheque is available in the records of the respondent. The systems generated calculation sheet furnished the details of delay in remittance of contribution. The statutory scheme were amended w.e.f 01/09/1991 and after the amendment Annexure A3 circular has no relevance to calculation of damages. It is settled law that internal circulars issued by Executive Officers cannot override the statutory provisions. In **Chairman SEBI Vs Sri Ram Mutual Fund**, 2006 (5) SCC 361 the Hon'ble Supreme Court held that the penalty become sign qua of violation and has held that no excuse from the employer can be entertained in a civil

liability case. The Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Ltd Vs RPFC**, 1982 (1) LLJ 440 held that financial difficulties of an establishment cannot be a ground for delayed remittance of contribution. The decision of the Hon'ble High Court of Mumbai in **KT Rolling Mills Vs RM Gandhi (Supra)** was reversed by the Hon'ble Supreme Court of India in **RPFC Vs KT Rolling Mills Pvt. Ltd**, 1995 (1) SCC 181. The damages recovered from the defaulting establishment are utilized to extend benefits to the poor employees and therefore the defaulters cannot be and should not get any relief at the cost of poor employees for whom the fund is created.

5. The learned Counsel for the appellant attacked the impugned order on various grounds. There is no dispute regarding the fact that there was delay in remittance of contribution during the relevant period. According to the learned Counsel for the appellant the respondent ought to have initiated the process for assessment of damages and interest immediately after the default. Because of the delay in initiating the process the appellant could not defend the case properly. According to the learned Counsel for the respondent, relying on the decision of the Hon'ble Supreme Court of India in

**Hindustan Times Ltd Vs Union of India** (Supra) the delay in initiating the process has only felicitated the appellant to utilize the money for himself or in his business. The Hon'ble Supreme Court held that “mere delay in initiating action U/s 14B cannot amount to prejudice in as much as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest”.

6. The learned Counsel for the appellant pleaded that there was delay in initiating the process U/s 14 B of the Act. The learned Counsel for the respondent argued that there is no limitation as far as assessment of damages U/s 14B is concerned. The Hon'ble Supreme Court in **RPFC Vs KT Rolling Mills Pvt Ltd**, 1995 (10) LLJ 882, **Hindustan Times Vs Union of India**, 1998 (1) LLJ 682, and **M/s K. Street Lite Electric Corporation Vs RPFC**, 2001 (1) LLJ 1703 held that there is no limitation provided U/s 14B of the Act and therefore introducing the concept of limitation in Sec 14B will be in violation of the legislative intention. The Hon'ble Supreme Court also pointed out that the delay in default related even to the contribution of the employees share which money, the respondent after deduction from



the wages of the employees, must have used for its own purpose at the cost of those of whose benefit it was meant. Any different stand would only encourage the employers to thwart the object of the Act.

7. Another ground pleaded by the learned Counsel for the appellant is that the respondent failed to follow the Annexure 4 circular dt. 29/05/1990 issued by the head quarters of the respondent organization. According to the learned Counsel for the appellant the 14B damages also includes the interest U/s 7Q. As rightly pointed out by the learned Counsel for the respondent, this circular has no relevance after amendment of EPF Scheme w.e.f 01/09/1991. Further Sec 14B and 7Q are two independent sections with different purposes. Hence any executive instruction issued in violation of the above provisions cannot override the statutory provisions under the Act.

8. The 3<sup>rd</sup> ground pleaded by the learned Counsel for the appellant is with regard to the lack of mensrea in delayed remittance of contribution. 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 actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities.”

9. The last ground pleaded by the learned Counsel for the appellant is with regard to financial difficulties of the appellant establishment during the relevant point of time. According to the learned Counsel for the respondent the appellant failed to produce any documents to substantiate the claim of financial difficulties before the respondent authority or in this appeal. 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 **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. 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