



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

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

(Wednesday the 5th day of May, 2021)

Appeal No.280/2018

(Old No. ATA no. 147(7) 2005)

Appellant : M/s. Harrisons Malayalam Ltd.,
Bristow Road, Wellington Island,
Cochin- 682003.

By M/s. Menon & Pai

Respondent : The Regional PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram - 695 004

By Adv. Nitha. N. S

This case coming up for final hearing on 19/03/2021 and this Tribunal-cum-Labour Court on 05/05/2021 passed the following.

ORDER

Present appeal is filed from order No. KR/313/RO/ TVM / PD / B / RS / 04 / 6530 dt. 06/01/2005 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 05/2003, 08/2003, 10/2003& 12/2003. The total damages assessed is Rs.21,633/-.

2. The appellant is a Public Limited Company registered under the Company's Act 1956. The appellant is a plantation company owning 23 tea & rubber estates in the state of Kerala and 2 estates in the state of Tamil Nadu. The appellant has 25,000 workers. The appellant is the single largest producer of natural rubber in south India. The plantation industry in south India has been experiencing severe financial crisis since 1998-99. The appellant establishment was incurring loss since 1999-20. There has been a serious erosion of financial status and economic viability of plantation industry in general. The loss incurred was the reason for belated remittance of contribution and the reasons are beyond the control of appellant establishment. It is for the first time that there was delay in remittance of contribution by the appellant w.e.f May 2003. Though many of the estates have not paid the wages to their employees, the appellant is mobilizing funds and paying the wages of employees. The net loss of the company during 1999-2000 was Rs.15.82 Crores and 2000-01 the loss was Rs. 17.89 Crores and 2001-02 the loss was Rs.15.90 Crores and 2002-03 the

loss was Rs.9.92 Crores. The accumulated loss of the appellant company during 2002-2003 was Rs.49.54 Crores. The respondent issued notice against one of its estate, i.e Lahai Estate for delayed remittance of contribution from 05/2003 to 12/2003. A representative of the appellant attended the hearing and informed the respondent that the delay occurred on account of financial crisis. The respondent failed to exercise the discretion available to him U/s 14B of the Act as well as Para 32A of EPF Scheme. In ***RPFC Vs SD College, Hoshiarpur***, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty together, he has the discretion to reduce percentage of damages. While levying damages, the respondent has included 12% towards interest portion. The fact that the damages under Para 32A of the Scheme is inclusive of interest payable U/s 7Q of the Act is clear from circular dt.29/05/1990 issued by the Provident Fund Commissioner, New Delhi. A true copy of the circular is produced and marked as Annexure A3. Though said circular was issued before the insertion of Para 32A of the Scheme, it gives an indication that

the rate of damages mentioned Para 32A includes interest portion as well. Sec 7Q of the Act came to effect subsequently by notification dt.01/07/1997.

3. According to the learned Counsel for the respondent the appellant establishment delayed remittance of provident fund contribution for the months may, August and December 2003. When there is delay in remittance of provident fund contribution damages U/s 14B read with Para 32A of the EPF Schedule is attracted. Hence the respondent issued a notice dt.24/09/2004 advising the appellant to show cause why damages U/s 14B of the Act shall not be levied on the appellant for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice showing the monthwise delay in remittance of contribution. A representative of the appellant attended the hearing on 29/11/2004. The delay in remittance was accepted. According to the representative of the appellant the delay was not intentional and was due to reasons beyond the control of the appellant. The appellant did not produce any document to substantiate the claim of financial difficulties. The respondent

considered all the relevant facts and issued the impugned order.

4. The appellant challenged the order assessing damages for belated remittance of contribution before the EPF Appellate Tribunal New Delhi as ATA No. 147 (7) 2005. EPF Appellate Tribunal New Delhi vide its order dt.18/11/2010 dismissed the appeal. The appellant challenged the said order before the Hon'ble High Court of Kerala in WP(C) No.1109/2011. The Hon'ble High Court of Kerala vide order dt.24/08/2011 set aside the order of EPF Appellate Tribunal in ATA No. 147 (7) 2005 and remitted the case back to the Tribunal with a direction to pass fresh orders within a period of two months, on the ground that the EPF Appellate Tribunal issued the order without hearing the appellant. The appeal files were transferred from EPF Appellate tribunal, New Delhi to EPF Appellate Tribunal, Bangalore. Thereafter the EPF Appellate Tribunal itself was abolished in the year 2017. Subsequently this Tribunal is notified to hear all the EPF appeal cases filed as per Sec 7(I) of the Act. Accordingly all the files pending before EPF Appellate Tribunal and Bangalore

were transferred to this Tribunal. Notice was issued to parties as directed by the Hon'ble High Court and the matter was heard and taken for disposal.

5. The main issue in this appeal is with regard to levy of damages for belated remittance of contribution. According to the learned Counsel for the appellant the delay was not intentional and was due to the financial difficulties of the appellant establishment. According to the learned Counsel for the appellant, the appellant establishment as a whole was having a cumulative loss of Rs.49.54 Crores as on 31/03/2003. According to the learned Counsel for the respondent the appellant failed to produce any documents to substantiate their claim of financial difficulties. According to the learned Counsel for the appellant it is a well known fact that the plantation industry was under severe financial strain from 1999-2000 onwards. When the appellant is claiming financial difficulty as a ground for delayed remittance of contributions it is up to the appellant to substantiate the claim by producing adequate evidence. It is not sufficient that they plead financial difficulties as a ground. 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 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 Estate 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.

6. Another ground pleaded by the learned Counsel for the appellant is that the respondent has included the interest portion of the 12% also in the damages assessed U/s 14B. The learned Counsel for the appellant relied on the Annexure A3 circular dt.29/05/1990 issued by the headquarters of the

respondent organization. The learned Counsel for the respondent submitted that the said circular is no more relevant after the amendment of Scheme provision in 1990 and also the notification of Sec 7Q w.e.f 01/07/1997. The interest U/s 7Q and damages U/s 14B of the Act are independent provisions. After the notification of the Sec 7Q there is no sanctity in the claim that the damages U/s 14B includes the interest U/s 7Q also. Hence the claim of the appellant is no more valid after the amendment of the Act and Scheme provisions.

7. As already pointed out, the appellant pleaded financial difficulties as a reason for belated remittance of contribution. According to the learned Counsel for the respondent the appellant admitted the fact that they were paying the employees' wages regularly in spite of the financial difficulties. When wages are paid to the employees the employees' share of provident fund 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 employees'

share of contribution deducted from salary is an offence U/s 405 and 406 of Indian Penal Code. Having committed an offense of breach of trust, the appellant cannot claim that there was no mensrea in belated remittance of contribution and the delay was not intentional atleast to the extent of employees' share deducted from the salary of the employees.

8. Considering the fact that the appellant establishment was facing financial difficulties at the relevant point of time, the appellant establishment is entitled for some relief with regard to levy of damages. Considering the facts, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the assessment U/s 14B is modified and the appellant is directed to remit 80% of the damages assessed as per the impugned order.

Sd/-
(V. Vijaya Kumar)
Presiding Officer