



सत्यमेव जयते

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

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

(Monday the 18th day of October, 2021)

Appeal No. 292/2019

Appellant : M /s. Kerala Furniture
Consortium Pvt. Ltd
Kodanad P.O
Kurichilakode
Perumbavoor
Ernakulam – 683544.

By Adv. Premalal &
Adv. Vishnu Jyothis Lal

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi – 682017.

This appeal came up for hearing on 13/07/2021 and
this Industrial Tribunal cum Labour Court issued the
following order on 18/10/2021.

ORDER

Present appeal is filed from Order No.KR / KCH / 27824 / Penal Damages / 2019 / 1981 dt. 16/04/2019 assessing damages U/s 14B and interest U/s 7Q of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 01/04/2014 to 31/12/2018. It is a composite order assessing damages U/s 14B to the tune of Rs. 1,35,022/- and interest U/s 7Q to the tune of Rs. 67,066/-.

2. The appellant establishment is established for the upliftment of small furniture units in the district of Ernakulam. The appellant unit is functioning as a common facility centre. The appellant charges only a nominal amount from those units as user fee in accordance with the objects of the appellant. The State and Central Government has contributed 70 % of the project cost. The appellant

establishment was running under loss from 2011 onwards. The machineries are obsolete and the appellant is not in a position to undertake the repairs and maintenance of the machineries due to financial constrains. The appellant therefore discontinued the operations w.e.f 31/10/2015. The loss for the year ended 31/03/2013 was Rs. 42,17,418/- and the loss for the year ending 31/03/2014 was Rs. 86,70,030/-. The true copies of the profit and loss account for the year ended 31/03/2014 is produced and marked as Annexure 1. The appellant subsequently produced income tax returns for the assessment year 2014 -15 and the balance sheet along with schedules as on 31/03/2014. The appellant also produced income tax returns for the year ended 31/03/2014 and balance sheet with schedules as on 31/03/2013. Due to financial constrains there was delay in payment of contribution. The delay was not intentional or due to any lapse or omission. The appellant received a notice

dt. 15/02/2019 from the respondent directing to show cause why damages shall not be assessed for belated remittance of contribution. A representative of the appellant attended the hearing and submitted the real state of affairs of the appellant establishment. Without considering the request of the appellant, the respondent authority issued impugned order assessing damages U/s 14B of the Act to the tune of Rs.1,32,022/-.The order issued by the respondent is non-speaking order and is issued mechanically. The respondent authority ought to have seen that there is no mensrea in the delayed remittance of contribution. The Hon'ble Supreme Court of India in **Assistant PF Commissioner and Another Vs Management of RSL Textiles India Pvt Ltd, 2017(3) SCC 110** held that mensrea or actus reus to contravene a statutory provision is relevant consideration while assessing damages U/s 14B of the Act. The respondent ought to have noticed that there is a vast change in the legal position as

explained by the Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 (4) SCC 573 after introduction of Sec 7Q in EPF & MP Act .

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant delayed remittance of contribution for the period from 1/4/2014 to 31/12/2018. Hence the respondent initiated action by issuing a show cause notice to explain the delay. A detailed delay statement was also forwarded to the appellant. The appellant was also given a personal hearing on 14/03/2019. A representative of the appellant attended the hearing and admitted the delay. No other records were produced by the appellant and no further pleading or submissions were made by the representative of the appellant. The appellant in this appeal for the first time is pleading financial difficulties as a

reason for delayed remittance of contribution. The Hon'ble High Court of Gujarat in **CP Kotak Bala Mandir Vs RPFC and Another**, SCA No. 3749 of 2011 held that mere existence of financial hardship is not sufficient explanation unless it is shown that no salaries were paid to the employees and consequently there was no deduction of employees' share of contribution. The appellant was provided adequate opportunity to explain the delay. Though the representative of the appellant attended the hearing he did not give any reason for delayed remittance of contributions. The Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Vs RPFC**, 1982 (1) LLJ 440 held that a combined reading of Paras and 30 & 32 of the EPF Scheme indicates that in cases where due payment of wages is made impracticable for certain reasons the obligation of the employer to pay both the contributions payable by himself and on behalf of his employee continues.

The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 held that Sec 14B was introduced in the Act to deter and thwart employers from defaulting in forwarding contributions to the funds, most often with ulterior motive of mis-utilizing not only their own but also the employees contribution .

4. There is no dispute regarding the fact that there was delay in depositing provident fund contribution for the period from 01/04/2014 to 31/12/2018. When there is delay in remittance of contribution, the appellant is liable to remit damages and interest for belated remittance of contribution. The respondent therefore issued a notice along with detailed delay statement. The appellant was also give an opportunity for personal hearing. A representative of the appellant attended the hearing and admitted the delay as per the statement sent along with the notice .No further submissions

were made and no other records were produced before the respondent authority. The respondent authority therefore issued a crisp order quantifying the damages and interest. The respondent found no reason to issue a speaking order, when the appellant did not raise any serious contention before the respondent authority. In this appeal the appellant has raised some serious issues such as financial difficulties for delayed remittance of contribution. The appellant also produced the balance sheet and the income tax returns for the year 2013-2014 & 2014-2015. According to learned Counsel for the appellant the loss of the appellant establishment for the financial year ended on 31/03/2013 was Rs.42,17,418/- and for the year ending 31/03/2014 the loss was Rs.86,70,030/-. According to him financial constrains is a mitigating circumstance while assessing damages U/s 14B of the Act. He further argued that there is no mensrea in belated remittance of contributions.

According to the learned Counsel for the respondent financial constrains cannot be a ground for delayed remittance of contribution unless it is established before the respondent authority that the financial difficulties directly contributed to the delay in remittance of contribution. In this case the appellant did not produce any records or document before the respondent authority and has not pleaded any ground as a mitigating circumstance for reducing the damages. He also pointed out that the appellant cannot, for the first time, raise these issues in this appeal. It is seen from the profit and loss account for the year ending 31/03/2013 that the total revenue of the appellant was 2.64 crores and the employee benefit expenses was Rs.1.06 crores. It is further seen that the salaries, wages and bonus component alone comes to Rs.1.03 crores and the provident fund liability is Rs. 2,97,112/-. Similarly for the year ending 31/03/2014 it is seen that the total revenue was Rs.2.50

crores and the employee benefit expenses was Rs.1.07 crores. Salaries, wages and bonus components for the year was Rs.1.04 crores and provident fund paid was Rs.3,31,901/-. It is also seen that the appellant establishment was having huge cash and bank balance during the relevant years. According to the learned Counsel for the respondent, the documents now produced by the appellant may not be taken into account for deciding the quantum of damages. According to Hon'ble Supreme Court in **Aluminium Corporation Vs Their Workmen**, 1963 (2) LLJ 629 SC the mere statements in balance sheets regarding current assets and current liabilities cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet itself is required to be proved by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. Even if we take into account the evidences now produced, it will not substantiate the case of

the appellant. It is seen that the wages of the employees are paid in time and the appellant has no case that there was delay in payment of wages to its employees. When wages are paid, the employee's share of contribution is deducted from the salary of the employees. As rightly pointed out by the learned Counsel for the respondent, even the employees' share of contribution deducted from the salary of the employees is not paid in time. As per Annexure 2 delay statement it is seen that there is a delay, varying from 75 days to 598 days, in remitting the contribution. The average delay is little over one year. Hence it is clear that the appellant establishment was using the employees' share of contributions deducted from the salary of the employees in his business. This action on the part of the appellant amounts to offences U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot plead that there was no mensrea in belated

remittance atleast to the extent of 50 % of the total contribution .

5. The learned Counsel for the appellant pointed out that the documents now produced by the appellant would substantially prove the financial difficulty of the appellant establishment. It is also seen that the appellant establishment was under heavy loss during the year 2013-14 and 2014-15. The learned Counsel for the appellant also submitted that the appellant unit is closed w.e.f 31/10/2015 due to the financial difficulties of the appellant establishment. Considering the above facts, the appellant is eligible for some reduction in damages assessed U/s 14B of the Act.

7. 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, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act. There is no interference with order demanding interest U/s 7Q, of the Act.

Sd/-

(V . Vijaya Kumar)
Presiding Officer