



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

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

(Monday the 22<sup>nd</sup> day of February, 2021)

**Appeal No.653/2019**

(Old No. ATA 58 (7) 2013)

Appellant : M/s. Kerala Assay & Hallmarking  
Centre (P) Ltd, X-815-31,  
St. Louis Commercial building  
Church Circle  
Trissur – 680 001

By Adv. K.K.Premlal

Respondent : The Assisstant PF Commissioner  
EPFO, Sub-Regional Office  
Kaloor , Kochi -682017

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on  
29/01/2021 and this Industrial Tribunal cum Labour  
Court issued the following order on 22/02/2021.

**ORDER**

Present appeal is filed from Order No. KR / KC / 27139 / Damages Cell / 2012 / 11777 dated. 20/11/2012 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 10/2008 to 2/2011. The total damages assessed is Rs. 1,51,260/-

2. The appellant establishment is a recognized assaying and hallmarking centre recognized under the Bureau of Indian Standards Act 1986. The recognition to an assaying and hallmarking centre is given against BIS criteria, which is in line with the international criteria on hallmarking and control of precious metals. The respondent issued a notice dt. 01/07/2010 stating that the appellant establishment is required to be covered under the provisions of the Act under the schedule head "Experts Service". A copy of the communication is produced and marked as Annexure1. The appellant had serious dispute

regarding the coverage as the activities of the appellant establishment will not come under the schedule head proposed by the respondent. Without considering the plea of the appellant the respondent insisted for compliance under the provision of the Act. The appellant paid the contribution. After the introduction of Sec 7Q, Sec 14B of the Act has become exclusively penal and therefore the respondent ought to have applied the tests evolved by the Hon'ble Supreme Court in ***Employees State Insurance Corporation Vs HMT Ltd***, AIR 2008 SC 1322. The respondent ought to have found that there is no contumacious conduct or willful delay in delayed remittance of contribution and therefore there was no mensrea or actus reus to contravene the statutory provision.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of contribution for the period from 10/2008 to 02/2011. Belated remittance of statutory dues will attract penal damages U/s 14B of the Act read with Para 32A of EPF

Scheme. Hence the respondent issued a notice dt. 05/11/2011 directing the appellant to show cause why penal damages U/s 14B should not be levied for belated remittance of contribution. A delay statement was also enclosed along the notice. The appellant was also given an opportunity for personal hearing on 20/11/2012. A representative of the appellant attended the hearing and stated that the appellant was covered under the provision of the Act in 2010 retrospectively from 2008. The representative had no objection regarding the delayed statement. Paras 30 & 38 of EPF Scheme mandates the appellant to remit the contribution within 15 days of close of every month. Any delay in remittance will attract damages U/s 14B. Unlike other penalties the damages U/s 14B does not go to the state fund but goes to augment the EPF trust funds and the same is used for declaring higher rate of interest to the employees. According to the Hon'ble Supreme Court in ***Organo Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 SC the expression

damages occurring in Sec.14B of the Act is in substance, penalty imposed on the employer for the breach of statutory obligation. The Hon'ble Supreme Court in ***Hindustan Times Ltd Vs Union of India and Others***, AIR 1998 SC 682 held that financial difficulties cannot be an excuse for delayed remittance of contribution. In ***Calicut Modern Spinning & Weaving Mills Vs RPFC***, 1981 (1) LLJ 440 the Hon'ble High Court of Kerala held that even in case of lockout, strike etc failure to make contribution resulting in default will have to be visited by damages U/s 14B of the Act.

4. The only ground pleaded by the learned Counsel for the appellant is regarding retrospective coverage of appellant establishment. It is seen from Annexure 1 that the appellant establishment is covered under the provisions of the Act w.e.f 01/10/2008 vide coverage memo dt. 01/07/2010. The learned Counsel for the respondent argued that the coverage memo is not a statutory requirement and as and when an

establishment satisfies the requirement of 1(3)(b), it shall stand covered under the provision of the Act. In this case, it is seen that the appellant had serious doubts regarding the legality of coverage. According to them, the appellant establishment will not come under the experts services notified under the Act. Hence it is not possible to blame the appellant for belated remittance of contribution when the coverage memo itself is issued two years later. On perusal it is seen that the damages are assessed for the same period for which there is belated notification for coverage. In such circumstance it is not possible to allege mensrea for belated remittance of contribution. However, the appellant cannot escape the responsibility for paying contribution in time because of the financial implications of delayed payments, on the trust funds.

5. 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 60% 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 60% of the damages assessed U/s 14B of the Act.

Sd/-

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