



सत्यमेव जयते

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

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

(Friday the 24th day of December, 2021)

Appeal No.699/2019

Appellant : Rajah School (Senior Secondary School)
Chavakkad, Trissur – 680 506

By Adv. K.K.Premlal

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

By Adv. Thomas Mathew Nellimmottil

This appeal came up for hearing on 28/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 24/12/2021.

ORDER

Present appeal is filed from Order No. KR / KCH / 19280/ Penal Damages /2019 / 5873 dt. 11/10/2019 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 10/1998 to

01/2001 and 06/2010 to 08/2017. The total damages assessed is Rs. 3,39,784/-.

2. The appellant is an educational institution run by a charitable organization. They received a notice dt. 05/07/2019 proposing to levy damages for the period from 10/1998 to 08/2017. A true copy of the notice dt. 05/07/2019 is produced and marked as Annexure A1. The appellant appeared pursuant to the said notice and submitted the reply dt. 06/08/2019. A copy of the said reply is produced and marked as Annexure A2. The levy of damages as per the above proceedings relate to periods from 10/1998 to 01/2001 and 6/2010 to 8/2017. There was undue delay in initiating the process thereby causing irretrievable prejudice to the appellant. The appellant is prevented from submitting a detailed explanation as the old records could not be traced out. When the available documents were produced, the respondent admitted several mistake in the date of payment shown in Annexure 1. Accordingly the respondent modified the Annexure 1 delay statement. The admitted mistakes in the basic notice for levy of damages coupled with the inordinate delay ranging from 18 years has resulted in irretrievable prejudice and hardship to the appellant. In view of the financial position, the employees' share

of contribution has been waived for the period from 05/1997 to 07/2000 as per order dt. 28/02/2001. A true copy of the order is produced and marked as Annexure-3. Similarly being part-time employees some of the employees were not enrolled to the fund. The respondent directed the appellant to enroll them from retrospective dates. All of them were enrolled and both shares of their contributions were remitted by the appellant. On verification of documents it is seen that the alleged delayed payments made on 17/8/2012, 20/9/2012 and 15/10/2012 represent the above payments. The appellant was not aware of the change made in Account No.22 with a minimum contribution of Rs.200/-. When the same was pointed out, the appellant remitted the contribution on 18/08/2016. The payments dt. 18/08/2016 in Annexure A1 notices represented the said delay. Ignoring all the above contentions the respondent issued the impugned order. It is the rule of law that all administrative action shall be initiated within a reasonable time. It is well settled that the employer can claim prejudice if the documents are not traceable because of the delay in the initiation of action U/s 14B. The law laid down in **Sushma Fabrics Pvt. Ltd Vs Union of India**, 1991 Lab IC 1946 was upheld by the Hon'ble Supreme Court in

Hindustan Times Ltd Vs Union of India and other, 1998 (2) SCC 242. The appellant has not deducted any share of contribution from the employees and therefore there is no basis for the findings of the respondent that 50% of the contribution amounts to the share of the employees deducted from the salary of the employees. The respondent authority ought to have exercised its discretion provided U/s 14B of the Act. In **Assistant PF Commissioner EPFO and another, Vs Management of RSL Textiles India Private Limited**, 2017 (3) SCC110, the Hon'ble Supreme Court held that existence of mensrea or actus reus to contravene statutory provisions must also be held to be a necessary ingredient for levy of damages. The legal position as explained by the decision of the Hon'ble Supreme Court in **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 has been substantially changed by the introduction of Sec 7Q charging interest and the incorporation of the words “ by way of penalty” to Sec 14B w.e.f 01/09/1991. In **SEBI Vs Sriram Mutual Fund** , 2007 AIR 2287 referred to by the respondent the penalty imposed under the relevant sections were mandatory.

3. The respondent filed counter denying the above allegations. The appellant failed to pay the contributions in time for the period

from 10/1998 to 01/2001 and 06/2010 to 08/2017. Accordingly summons dt. 05/07/2019 was issued to the appellant to show cause why damages shall not be levied. A personal hearing was also afforded on 18/07/2019. A detailed damages statement showing belated remittance for the entire period was also annexed alongwith the summons. A representative of the appellant attended the hearing and submitted that because of the delay in initiating the process, the appellant suffered irretrievable prejudice. It was also pointed out that for the period 05/1997 to 07/2000 the employees' share of contribution was waived/reduced by the respondent authority. The employers' share of contribution was permitted to be remitted in installments and the appellant remitted the same as per the direction of the respondent. The representative of the appellant also produced a statement dt. 21/08/2019 showing certain discrepancies in the date of remittance indicated in the damages statement. The representative of the appellant also submitted that the delay was due to financial difficulty of the appellant establishment. The appellant filed a statement showing the dates of remittance for 01/2011, 03/2011, 08/2011, 11/2011, 01/2012, 03/2012, 04/2012, 05/2012, 06/2012 and 10/2014. The appellant failed to produce any

document to substantiate their claim of financial difficulties. On verification of the records maintained by the respondent, it was noticed that there was no delay in remittance of contribution for the months 01/2001, 03/2011, 08/2011, 11/2011, 01/2012, 03/2012, and 10/2014. Hence those months were excluded from assessment of damages. Further the date of remittances for the months of 03/2012 to 06/2012 were also corrected and the calculation sheet was revised and enclosed along with the impugned order. Hence it was clear that the appellant remitted the contribution belatedly for the rest of the months. The appellant also pleaded that the delay in remittance was due to financial difficulties. The Hon'ble Supreme Court of India in **Hindustan Times Ltd., Vs Union of India**, AIR1998 SC 688 held that bad financial condition is no defense for delayed deposit of provident fund money.

4. The assessment of damages U/s 14B against the appellant establishment is challenged on various grounds. One of the main ground on which the impugned order is challenged is that of delay. The learned Counsel for the appellant argued that the delay of 17 years in initiating the process has caused prejudice to the appellant as many of the old records could not be retrieved and from the retrieved

records it could prove that there was mistake in the delay statement forwarded by the respondent authority. The question of delay in initiating 14B proceedings was considered by various Courts and it was held that the legislature never contemplated any limitation in Sec 14B of the Act. In **Hindustan Time Ltd Vs Union of India**, 1998 AIR (SC) 688 (SC2J) held that

“ In spite of all these amendments over a period of more than 30 years, the legislature did not think fit to make any provision prescribing a period of limitation. This, in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the damages. As the amounts are due to the trust fund and recovery is not by suit, the provisions of the India limitation Act 1963 are not attracted”.

5. The Hon'ble Supreme Court again considered the question of delay in initiating 14B proceedings in **M/s. K. Street Lite Electric Corporation Vs RPFC**, 2001 (4) (SCC) 449 and held that the delay of 10 yrs in initiating proceedings U/s 14B of the Act will not be a ground for setting aside an order imposing damages. In **RPFC Vs KT**

Rolling Mills Pvt. Ltd, 1995 LIC 1069 the Hon'ble Supreme Court examined whether a delay of 12 yrs will vitiate an order imposing damages. The Hon'ble Supreme Court held that the assessment of damages U/s 14B cannot be set aside on the ground of delay.

6. The next ground pleaded by the learned Counsel for the appellant is that of financial difficulties. According to the learned Counsel for the respondent no documents to substantiate the claim was produced before the respondent authority. 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.

7. The last ground pleaded by the learned Counsel for the appellant is that of lack of mensrea in belated 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”

8. The appellant establishment is a school run by a charitable organization. As rightly pointed out by the learned Counsel for the appellant, there was undue delay in initiating the proceedings U/s 14B of the Act. It is a settled legal position that there is no limitation in initiating proceedings U/s 14B. The learned Counsel for the appellant however proved that the available documents would prove that the damages statement issued by the respondent authority contained a lot of errors and to the extent documents were produced the delay statement was revised. According to the learned Counsel for the appellant, the delay in initiating the process of assessing 14B damages has really caused prejudice to the appellant establishment. Taking into account all those facts, it is felt that the appellant is entitled for some relief in damages U/s 14B of the Act.

9. 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 75% 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 75% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer