



सत्यमेव जयते

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

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

(Wednesday the 28<sup>th</sup> day of April, 2021)

**APPEAL No.118/2018 & 119/2018**

Appellants

1. M/s. Mount Estate  
Vandiperiyar P.O  
Idukki  
Pin – 685533
2. M/s. Thungamullay Estate  
Vandiperiyar P.O  
Idukki  
Pin – 685531

By Adv. V.B. Hari Narayan &  
Adv. Shazia Bint Ashraf

Respondent

The Assistant PF Commissioner  
EPFO, Sub- Regional Office,  
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on  
15.03.2021 and this Tribunal-cum-Labour Court on  
28.04.2021 passed the following:

**ORDER**

**Appeal No. 118/2018** is filed from order No. KR/KTM / 3110/ APFC /Penal Damages / 2017-2018 / 7120 dt. 19/03/2018 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 07/2013 to 05/2017. The total damages assessed is Rs. 10,49,591/-.

2. **Appeal No. 119/2018** is filed from order No. KR/KTM/270/APFC/Penal Damages/2018-2019/216 dt. 24/04/2018 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 08/2013 to 05/2017. The total damages assessed is Rs. 4,61,180/-.

3. Both the above estates are owned by M/s. Bethel Plantations Pvt. Ltd. and common issues were raised in both the appeals. The appeal were heard together and disposed of by this common order.

4. The appellants are divisions of M/s. Bethel Plantations Pvt. Ltd registered under the provision of the Companies Act 1956. The appellant was regular in compliance. There was some delay in remittance of contribution during 2013 to 2017. The respondent therefore issued notices to show cause why damages shall not be levied for belated remittance of contribution. The appellants submitted a reply, stating that the delay in remittance was not willful and was only on account of financial constraints and hardships faced by the appellant. It was further pointed out that in the light of the decision of Hon'ble High Court of Kerala in ***RPFC Vs Harrison Malayalam Ltd***, 2013 (3) KLT 790 the levy of damages U/s 14B is not an automatic process and financial hardship is certainly a matter for consideration by the authority before deciding the quantum of damages. Ignoring the contentions of the appellant, the respondent issued the impugned orders.

5. When appeal No.119/2018 was pending before this Tribunal, the respondent initiated coersive action

against the appellant issuing prohibitory orders attaching the bank account operated by the appellants. A copy of the proceedings dt. 27/02/2019 is produced and marked as Exbt B3. The appellants suffered huge losses during the relevant period. Out of 3000 acres of estate only an extent of 1400 acres was brought under cultivation and the yield per acre was reduced drastically. The total loss for the period 2013-14 to 2018-19 was around 22 crores. A statement showing the Profit and Loss of the appellant company is produced and marked as Exbt P4. The appellant approached the Hon'ble High Court of Kerala in WP(C) No. 6567/2019 and the Hon'ble High Court vide order dt.12/03/2019 stayed the recovery action taken by the respondent till the disposal of present appeal.

6. The respondent filed counter denying the above allegations. The appellants are divisions of Bethel Plantations engaged in tea plantation business. The company entered into a lease agreement with RBT, MM Sharma group which own the tea estates, in the year 2011

which is valid till 2021, for managing the assets of the company. Hence the appellant started operation of the estate from 2011. The appellant defaulted in payment of statutory contributions. Hence proceedings U/s 14B of the Act was initiated for levying damages for belated remittance of contribution. A representative of the appellant attended the hearing and submitted financial difficulties as a reason for belated remittance of contribution. The appellant also produced copy of balance sheet to substantiate their claim of financial difficulties. Payment of contribution in time is a statutory obligation cast upon the appellants under Para 38 of EPF Scheme. The Division Bench of the Hon'ble High Court of Kerala in ***Calicut Modern Spinning & weaving Mills Vs Regional PF Commissioner***, 1982 LAB IC 1422 held that Para 38 of EPF Scheme obliged the employer to remit the contribution within 15 days of close of every month. Admittedly there was delay in remittance of contribution and therefore the respondent issued notice to appellants to show cause why damages U/s 14B of the Act read with Para 32A of EPF Scheme shall not be levied for

belated payments. A detailed delay statement showing the due date of payment, the actual date of payment and the delay in remittance was also forwarded along with the notice. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and admitted the delay. The representative contented that the delay was due to financial constraints. The dictum laid down by the Division Bench of the Hon'ble High Court of Kerala in ***RPFC Vs Harrison Malayalam Ltd*** (supra) is not applicable to the present case as the delay in the above case for remittance of contribution was due to the stay granted by the Hon'ble High Court against Employees Pension Scheme 1995. The Hon'ble Supreme Court of India in ***Hindustan Times Vs Union of India***, AIR 1998 SC 688 held that default on the part of the employer based on the plea of financial difficulties or relating to financial indebtedness or the delay in realization of amounts cannot be justifiable grounds for the employer to escape liability. The employer is liable for penalty if there is delay in contribution. The financial difficulty, if any, should have

been proved through documentary evidence before the authority. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 (20) LLJ 416 SC held that even if it is assumed there was loss sustained, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment in different points of time. In ***New Commercial Mills Vs Union of India***, the Hon'ble High Court of Gujarat held that where the employer is a habitual defaulter, in respect of payment under the Act, financial hardships or constrains is not sufficient to mitigate damages.

7. Admittedly there was delay in remittance of contribution by the appellant establishments. The respondent therefore issued notice to the appellants to show cause why damages shall not be levied. A detailed delay statement was also enclosed along with the summons. The appellant was also given an opportunity for personal hearing. A representative of the appellant appeared before

the respondent and pleaded financial difficulties as the reason for delayed remittance of contribution. The appellant produced balance sheets before the respondent authority to substantiate financial difficulties of the appellant at the relevant point of time. According to the learned Counsel for the respondent the financial constraints as such cannot be accepted for waiving or reducing penal damages unless it is shown that the appellant failed to pay wages to the employees because of the financial difficulties. In this case appellant has no claim that the wages of the employees were not paid in time. When the wages of the employees are paid employees' share of the contribution is deducted from the salary of the employee. Non-payment of employees' share of contribution which amounts to 50% of the total contribution, is a criminal offence U/s 405 & 406 of Indian Penal Code. Having committed the offence of breach of trust, the appellant cannot plead that there was no mensrea or intentional delay in remittance of provident fund contribution atleast to the extent of 50% of the total dues payable by the appellant establishments. Hence the



appellants cannot escape the liability of damages atleast to the extent of belated remittance of employees' share of contribution deducted from salary of the employees.

8. The appellant did not produce any document to substantiate the claim of the financial difficulties in these appeals. However they produced a statement as Exbt.P4 in Appeal No 119/2018. As per the Exbt. P4 statement which has no legal authority or validity, the approximate loss of /s. Bethel Plantations Pvt. Ltd for the period from 2013-14 to 2018-19 is 22.83 crores. As already stated there is no document to substantiate the claim of the appellants. 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.

9. From the pleading of the appellants it can be seen that the appellants was running under loss during the relevant period of time. However, the exact nature of loss and reasons for the same could not be established by the appellants by supporting evidence. Hence the appellants are entitled for some relief with regard to the claim of damages for the relevant period of time.

10. 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, and the impugned orders are modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

Sd/-

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