



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

सत्यमेव जयते

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

(Tuesday the 10<sup>th</sup> day of November, 2020)

**Appeal No.72/2019**

(Old No. ATA NO. 435(7)2014)

Appellant : M/s. Kerala Electrical & Allied  
Engineering Co. Ltd,  
Industrial Estate P.O,  
Palakkad 678731

By Adv. Menon & Pai

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Kozhikode – 673 006

By Adv. Dr. Abraham P.Meachinkara

This is case is coming up for final hearing on  
19/10/2020 and this Tribunal-cum-Labour Court on  
10/11/2020 passed the following:

**ORDER**

Present appeal is filed from Order No. KR /  
KK /1027/ Enf IV (1) / 14B / 2014 / 1072 dt.19/05/2014  
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 04/2010 to 01/2014. The total damages assessed is Rs. 6,31,524/-.

2. The appellant is a Government of Kerala undertaking engaged in manufacturing and marketing of switch gear. Due to stiff competition in the market there was delay in payment of wages to the employees and due to financial constraints there was delay in remittance of contribution. The delay occurred on account of factors beyond the control of the appellant. The financial position of the appellant has been declining due to various factors leading to a reduction in the total turnover of the appellant. The appellant was facing cash flow constraints for the last few years, which has affected its operations of the company. With declining profitability and increasing financial costs, the appellant was unable to make adequate investments in business operations. The accumulated loss of the appellant company till 31/03/2012 was more than Rs.5 crores and the loss for the financial year ended 31/03/2013 was Rs.74.61 lakhs. Copies of the Balance Sheet and Profit and Loss Accounts for the financial year 2010-2011, 2011-2012 and 2012-2013 are produced and marked as Annexure A1-A3. The respondent initiated proceedings U/s 14B of the

Act. Proposing to levy damages for belated remittance of contribution for the period from 04/2010 to 01/2014. The proceedings was initiated by Annexure A4 notice. The appellant appeared before the respondent and explained the circumstances leading to delay in remittance of contribution. Without considering any of the contentions put forth by the appellant, the respondent issued the impugned orders. The respondent failed to exercise the discretion vested in him by the statute while issuing impugned order. The facts that the employer has to be heard before an order is passed U/s 14B implies that a wide discretion is vested in the respondent while imposing damages. In **RPFC Vs SD College Hosiarpur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the commissioner has no power to waive penalty altogether he has powers to reduce the percentage of damages. The Division Bench of Hon'ble High Court of Kerala in **Regional Provident Fund Commissioner Vs Harrisons Malayalam Ltd.**, 2013(3) KLT 790 also held that the respondent has the discretion while deciding damages U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act and the appellant is liable to remit contribution U/s 6, 6A & 6C of the Act and the schemes framed thereunder. As per Para 30 of the EPF Scheme, 1952 the appellant is liable to remit contribution within 15 days of the close of every month. There was delay in remittance of contribution and therefore the appellant is liable to remit damages U/s 14B of the Act read with Para 32 A of this Scheme. Hence a notice dt. 18/03/2014 was issued to the appellant to show cause why damages shall not be levied for belated payment of contribution. A representative of the appellant appeared before the respondent on 29/04/2014 and admitted the delay in belated remittance of dues. It is seen that as per the returns filed by the appellant and details of the remittance on record, and on the basis of the submissions of the respondent, there was delay in remittance of PF contribution. The damages were levied as per Para 32 A of EPF scheme. In **Bharath Plywood and Timber Products Pvt. Ltd Vs. EPF Commissioner**, 1977 (50) FJR, 74 (Kerala High Court ) the Hon'ble High Court of Kerala held

that if an employer makes default in the payment, he shall be liable to pay the amount by way of penalty such damages, not exceeding the amount of arrears as may be specified in the scheme. Though there is sufficient reason to make belated payment, that is not a ground for granting exemption for paying penalty of damages. **In Organo Chemicals Industries Vs Union of India**, 1979 (4) SCC 573 the Hon'ble Supreme Court held that the successful working of Social Security Schemes depends on prompt and regular compliance made by the employer. Damages are levied as a penal measure for the failure in prompt compliance in remittance of the statutory dues of the beneficiary employees. As per Para 38 of EPF Scheme, an employer is liable to pay monthly PF contribution within 15 days of close of every month. The appellant also failed to remit the contribution deducted from the salary of the employees in time. In **RPFC Vs SD College** (Supra) the Hon'ble Supreme Court held that the commissioner has no power to waive damages impliedly meaning that the word "may" is to be construed having the meaning of "shall". 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 lock-out, strike etc. failure to make contribution will attract damages U/s 14B of the Act. As per Paras 30 & 32 of EPF Scheme the employers are required to remit PF contribution in the first instance on the wages due. Hence delayed payment of wages will not in any way affect the statutory obligation of the appellant to remit the contributions in time.

4. According to the learned Counsel for the appellant, there was some delay in remittance of contribution due to reasons beyond the control of the appellant. The main reason alleged by the appellant is financial difficulties of the appellant establishment. To substantiate their claim the appellant produced the Profit and Loss Account of the appellant company for the year 2010-2011, 2011-12 & 2012-2013. Nothing could be made out from these documents regarding the real financial position of the appellant. It has been pointed out by the Hon'ble Supreme Court in **Aluminium Corporation Vs Their Workmen**, 1963 (2) LLJ 629 that the mere statements in the Balance Sheet or in the Profit and loss account as regards current assets and liabilities cannot be taken as correct. They have to be established by proper

evidence by those responsible for preparing the Balance Sheet. In this case the appellant failed to produce even the Balance Sheet which could have exposed the actual financial position of the appellant establishment more clearly. However, the documents produced by the appellant would indicate there was some financial constraints in the appellant establishment during the relevant point of time . Further the appellant failed to prove that there was delay in payment of wages to the employees during the relevant point of time. According to the learned Counsel for the appellant, penalty is an elastic term with many different shades of meaning, it involves the idea of punishment, corporeal or pecuniary or civil or criminal although its meaning is general confined to pecuniary punishment. Penalty is imposed as a punitive measure and therefore the defaulter should possess culpable intend or mensrea. According to the learned Counsel for the respondent the concept of mensrea is involved in the criminal justice system and has its own limitation while extending to civil disputes, particularly in the cases dealing with social security legislation. The learned Counsel for appellant relied on the decision of the

Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd** (supra) to argue that the powers of the adjudicating officer to impose penalty as a measure of deterrence on defaulting employers cannot be concerned solely with augmenting or enriching the coffers of the fund alone. The learned Counsel also argued that an establishment crippled with financial difficulties cannot be burdened with penal consequences by way of damages so as to be a death knell of the establishment itself. The learned Counsel for the respondent on the other hand argued quoting the decision of Hon'ble Supreme Court of India in **Organo Chemicals** case (supra) that the very survival of Social Security Schemes, such as EPF Scheme, depends on timely receipt of the contribution into the fund and timely investment of the same. If more establishments are allowed to default on the ground of financial difficulties, the social security system itself will not survive. That is the reason why adequate provisions were incorporated in the scheme mandating the employers to remit the contribution in time even if the wages are delayed. In this case however the financial position of the appellant establishment is not that critical warranting delayed remittance of contribution.



The learned Counsel relied on the following decision to argue that financial constraints is a mitigating factor for lessening the liability U/s 14B of the Act.

- 1) **M/s. Sreekamakshi Agency Pvt. Ltd. Vs Employees Provident Fund Tribunal,** WP(C) No. 10181/2010.
- 2) **Elstone Tea Estate Ltd Vs RPFC,**  
**WP(C) No. 21504 of 2010.**
- 3) **Standard Furnishing ( Unit of Sudarshan Trading Co. Ltd) Vs. Registrar EPF Appellate Tribunal,**  
2020 KLJ 528.
- 4) **M/s RD Ariyakudi Primary Agricultural Co-Operative Bank Vs. Employees PF Appellate Tribunal,** 2020 LLR 229.

The learned Counsel for the respondent pointed out that the appellant failed to produce any documentary proof to support of the claim of the financial difficulties before the respondent authority and hence cannot claim that the impugned order is bad in law because the financial difficulties are not factored in the impugned order. Though

the appellant claimed that there was delay in payment of wages the appellant failed to substantiate the same through any evidence and therefore it is not possible to accept the pleading of the learned Counsel for the appellant that there was delay in payment of wages. When wages are paid to the employees, the employees share of PF contribution is deducted from the salary of the employees. Nonremittance of employees' share of contribution deducted from the salary of the employees is an offence 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 delayed remittance of contribution.

5. However, considering the fact that the appellant is a public sector undertaking under government of Kerala and since the appellant was facing some financial constraints during the relevant point of time, I am of the

considered view that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60 % of the assessed damages U/s 14B of the Act.

Sd/-

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