



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

सत्यमेव जयते

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

(Friday the 15<sup>th</sup> day of January, 2021)

**Appeal No. 244/2019**

(Old No.ATA-912(7)2015)

Appellant

M/s. Kerala Electrical & Allied  
Engineering Company Ltd.,  
Industrial Estate PO  
Olavakkode  
Palakkad- 678 731

By M/s. Menon & Pai

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Eranhipalam  
Kozhikode – 673006

By Adv. Dr. Abraham.P.Meachinkara

This case coming up for hearing on 29.12.2020 and this Industrial Tribunal-cum-Labour Court issued the following order on 15/01/2021.

**ORDER**

Present appeal is filed from order No. KR /KKD/ 0001027/ 000 / Enf 4(1) 2015/2985 dt. 15/07/2015 assessing dues U/s 14 B of EPF & MP Act,1952 (hereinafter referred to as 'the Act') for belated remittance of

contribution for the period from 08/2012 to 10/2014. The total dues assessed is Rs.1,20,096/-.

2. The appellant is a Government of Kerala undertaking engaged in the manufacture and marketing of switch gear. The appellant establishment was regular in compliance. However due to stiff competition in the market, there was loss in the appellant company and consequently there was delay in payment of wages due to financial constraints. The financial position of the appellant was declining from the year 2000 onwards. The appellant has been facing cash flow constraint for the last few years which affected the operation very badly. The accumulated loss till 31/03/2014 was more than 113 crores and loss for financial year 2014 were Rs. 5 crores. The Profit and Loss account for the financial years 2011-2012, 2012-2013 and 2013-2014 are produced and marked as Annexure A1, A2 and A3 respectively. The turnover of the company has been going down year after year and company started defaulting in payment of loan of financial institutions. This lead to further reduction of working capital thereby reducing the turn over and also increasing the loss. Provident Fund payments were delayed due to circumstance beyond the

control of the appellant. On account of adverse financial conditions, the company could not even pay the salary of the employees in time and consequently there was delay in payment of PF contribution. The appellant received a notice from the respondent and a representative of the appellant appeared before the respondent and pointed out that the delayed remittance of PF contribution was not willful or deliberate and due to reasons beyond the control of the appellant. Without considering the above pleadings the respondent issued the impugned order. The respondent failed to exercise the discretion available to him U/s 14B and Para 32A of EPF scheme. In ***RPFC Vs SD College Hoshirpur***, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty all together, he has the discretion to reduce the percentage of damages. The Division Bench of Kerala High Court in ***RPFC Vs Harrison Malayalam Ltd***, 2013 (3) KLT 790 held that if the delay in remitting contribution is not deliberate the mitigating circumstances shall be considered by the respondent.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under provision of the Act w.e.f 31/12/1961. The appellant is liable to remit the contribution within the statutory period. There was delay in remittance of contribution which attracts damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice dt. 23/04/2015 was issued to the appellant along with a delay statement, to show cause why damages contemplated U/s 14B of the Act should not be recovered for belated remittance of contribution. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and admitted the delay. However pointed out that the delay was due to the financial constraints. ***In Calicut Spinning and Weaving Mills Ltd Vs RPFC***, 1982 KLT 303 the Hon'ble High Court of Kerala held that an employer is bound to pay contribution under the Act every month irrespective of the fact whether wages have been paid or not. In ***Bharath Plywood and Timber Products Vs RPFC***, 1977 (50) FJR 74 (KHC ) the Hon'ble High Court of Kerala held that if an employer makes default in the payment of contribution to the fund,

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 this scheme. Though there is sufficient reasons to make belated payment that is not a ground for granting exemption for paying penalty or damages. In ***Chairman SEBI Vs Sri Ram Mutual Fund***, Civil Appeal No. 9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of a civil Act.

4. The only ground pleaded by the learned Counsel for the appellant for the delayed remittance of contribution is that of financial difficulties. Relying on Annexure A1 to A3, the Balance Sheets for the year 2011-2012,2012-2013,2013-2014 respectively, the learned Counsel argued that the financial position of the appellant establishment was very bad and the loss for the year ending 31/03/2012 was Rs.6.28 crores and for the year ending 31/3/2013 the loss was Rs.6.49 crores and for year ending 31/3/2014 the loss was Rs. 3.79 crores. The documents produced by the appellant is only a one page summary of the Balance Sheet which cannot be taken into account for deciding financial health of the establishment. The Hon'ble Supreme Court of

India in ***Aluminium Corporation Vs Their Workmen***, 1963 (2) LLJ 629 SC held that the current assets and liabilities as reflected in the Balance Sheet cannot be accepted unless the same is proved before the appropriate authority by a competent person. In this case a summary statement will not in any way prove the financial constraints pleaded by the learned Counsel for the appellant. In ***Shanti Garments Vs RPFC***, 2003 (1) CLR 228 (Mad) the Hon'ble High Court of Madras held that where there is no willful violation the quantum of damages should be more or less compensatory in nature and the default if continuous and intentional the damages payable shall be penal in addition to compensation. In ***Harrison Malayalam Ltd case ( supra)*** the Hon'ble High Court of Kerala held that the financial difficulties of the establishment shall also be considered while deciding the quantum of damages. The Hon'ble High Court of Kerala in ***Sree Kamakshy Agency Pvt.Ltd Vs EPF Appellate Tribunal***, WPC No. 10181/2010 held that if the contribution is not paid due to any deliberate action on the part of the employer the mitigating circumstances shall be considered by the respondent. In ***Elston Tea Estate Vs RPFC***, WPC No.

21404 /2010 the Hon'ble High Court of Kerala held that the financial constraints have to be demonstrated before the authority with cogent evidence to arrive at a conclusion that it is a mitigating factor. In **Standard Furnishing ( Unit of Sudarsan Trading Co. Ltd) Vs EPF Appellate Tribunal**, 2020 (3) KLJ 528 the Hon'ble High Court of Kerala held that levy of damages is not automatic and all the circumstances which lead to the delay in remittance shall be considered before issuing the orders. In **M/s RD Ariyakudi Primary Agro Co-Operative Vs Employees PF Appellate Tribunal**, 2020 LLR 229 the Hon'ble High Court of Madras held that financial constraints shall be considered to see whether there is mensrea on the part of the employer in delayed remittance of contribution.

5. As already pointed out the only ground pleaded by the appellant is that of financial difficulties and the documents produced in support of the claim is not adequate in examine the real financial constrain of the appellant establishment. It only shows that the appellant was suffering financial loss during the relevant point of time. The learned Counsel for the appellant also pleaded that there was no mensrea in delayed remittance of

contribution. The learned Counsel for the respondent argued that though the appellant claimed that there was delay in payment of wages, no documents were produced to support such claim. When the wages of the employees are paid, the employees' share of contribution is deducted from the salary of the employees. Non-payment of the employee share of contribution deducted from the salary of the employee is an offence U/s 405 & 406 of Indian Penal Code. It is seen from Annexure A4 that there was considerable delay in remittance of contribution which varies from 19 days to 541 days. The employees' share of contribution deducted from the salary of the employees is retained by the appellant for such a long time. Having committed the offence of breach of trust, the appellant cannot plead that there was no mensrea, atleast to the extend of employees share of contribution which amounts to 50% of the total contribution.

6. Considering all the facts, circumstances, pleadings and evidence, 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 .

Sd/-

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