



सत्यमेव जयते

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

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

(Tuesday the 1<sup>st</sup> day of June, 2021)

**APPEAL No.254/2018**

(Old No. A/KL.32/2017)

Appellant

M/s.Jairam & Sons  
G.V. Ayyar Road,  
Willington Island  
Kochi – 682 003

By Adv. Benny P Thomas

Respondent

The Assistant PF Commissioner  
EPFO, Regional Office,  
Bhavishyanidhi Bhavan  
Kaloore  
Kochi – 682 017

By Adv. S. Prasanth

This case coming up for final hearing on  
26/03/2021 and this Tribunal-cum-Labour Court on  
01/06/2021 passed the following:

**O R D E R**

Present appeal is filed from Order  
No. KR / KCH / 1596 / DAMAGES CELL / 2 / 2016-17 /16397  
dt.17.02.2017 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 09/1999 to 11/2008 and 09/2006 to 12/2012. The total damages assessed is Rs. 2,32,755/-.

2. The appellant is a partnership firm engaged as a steamer agent. During the period 2014-15, the Enforcement Officer of the respondent organisation conducted an inspection and issued notice alleging that there is delay in payment of contribution during the period 1999-2008 and 2006-2012. The appellant submitted a written statement which was ignored by the respondent authority and issued order dt.25.01.2016 assessing damages of Rs. 85,537/-. A true copy of the order is produced and marked as Annexure A1. Since the assessment was made without providing an opportunity to the appellant, the appellant establishment filed Writ petition No. 6981/2016. During the hearing of the Writ petition, the Counsel for the respondent informed that the order dt.25.01.2016 is withdraw and the Hon'ble High Court of Kerala passed a judgement dt.29.02.2016. A copy of judgement is produced and marked as Annexure A2. Subsequently the respondent issued notice

proposing levy of damages for the period from 09/1999 to 01/2013. A true copy of notice is produced and marked as Annexure A3. The appellant appeared in enquiry and filed a reply dt.10.12.2016 explaining that there was no delay in remittance of contribution. A true copy of the reply dt.10.12.2016 is produced and marked as Annexure A4. Without considering any of the contentions made by appellant, the respondent issued the impugned order which is marked as Annexure A5. The notice was issued after 17 years alleging that there was delay in remittance of contribution. The respondent cannot put the burden of proof on the appellant to substantiate that there was no delay in remittance of contribution after 17 years. The appellant was never issued with any notice during the period of delay. The respondent didn't give any records and the appellant is therefore prejudiced by non-production of details by the respondent. The respondent did not consider that the appellant denied any delay in remittance of contribution and therefore the burden is on the respondent to substantiate the delay. Sec 14B of the Act and Para 32A of EPF Scheme provide discretion to the respondent to reduce or waive damages in appropriate cases. In **RPFC Vs SD college Hoshiarpur**, 1997(2)

LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of damages. In ***Indian Telephone Industries Ltd Vs APFC, Calicut*** WPC No.32515 of 2005 the Hon'ble High Court of Kerala held that the authority exercising powers U/s 14B has the discretion to reduce damages. The Division Bench of Hon'ble High Court of Kerala in ***Harrisons Malayalam Vs RPFC***, 2013 KLT 730 held that financial constraints are to be considered as a valid reason for reducing the damages.

3. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance of contribution for the months of 9/1999 to 11/2008 and 9/2006 to 12/2012. Belated remittance of contribution as provided U/s 6 of the Act, will attract penal damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent issued a notice dt.16/4/2014 to show cause with documentary evidence as to why penal damages as stipulated U/s 14B of the Act with Para 32A of EPF Scheme should not be levied for the belated remittance of contribution. A detailed statement showing the due date payment, the actual date of payment, the delay in

remittance of contribution and proposed damages was also send along with the notice. The appellant was also given an opportunity for personal hearing on 11/06/2014. A detailed statement showing the belated remittance of contribution for assessing the damages was also annexed to the notice. The appellant filed WP(C) No. 6981/2016 before the Hon'ble High Court of Kerala challenging Annexure A1 assessment order. The respondent noticed that the assessment was made only for a part of the delay and therefore the order assessing damages was withdraw. In view of withdrawal of the order the Hon'ble High Court of Kerala disposed the Writ petition by Annexure A2 judgement with direction to pass fresh proceedings as per law. In pursuance of Annexure A2 judgement, a fresh enquiry was initiated for assessment of penal damages for delay in remittance of contribution. Accordingly, Annexure A3 notice was issued to the appellant. A detailed damages statement was also issue along with the notice. The appellant also called upon to appear in person or through an authorised representative for a personal hearing on 22/08/2016. A representative of appellant attended the hearing on 11/11/2016 and requested for adjournment. The request was granted and enquiry was

adjourned to 12/12/2016. The appellant submitted Annexure A4 reply statement dt.10/12/2016. In the Annexure A4 reply statement the appellant submitted that,

- I. The amount of Rs. 83,016/- relates to contribution on account of revision of wages from July 2003 to March 2004 as per the agreement with Staff Union, which was paid only on 22/06/2004 and the remittance of contribution was made on 29/06/2004.
  - II. The amount of Rs. 93,019/- represents contribution on account of revision of wages for the period from November 2008 to April 2009 which was paid only on 19/08/2009 and the remittance of contribution made on the same date.
  - III. The remittance of Rs. 13,346/- dt.23/09/2011 is due to the loan repayment by an employee.
  - IV. The remittance of Rs.61,222/- being the Provident Fund contributions for April 2011 was remitted on 12/05/2011.
4. After taking into account of the above clarifications made by the appellant the respondent issued impugned order.

The main issue raised by the appellant is with regard to the arrears of wages paid to its employees retrospectively consequent on the wage revision. The Hon'ble Supreme Court of India considered the above issue in ***Prantiya Vidhyut Mandal Mazdoor Federation Vs Rajasthan State Electricity Board and Others***, AIR 1992 SC 1737. According to Hon'ble Supreme Court of India if the original emoluments earned by an employee were "basic wages" under the Provident Fund Act, the substituted emoluments as a result of the wage revision are also to be treated as basic wages and when wages are revised from a retrospective date the revised emoluments earned by the employees has to be taken as part of the contract of employment in the context of the Provident Fund Act and are to be treated as basic wages in terms of Section 2(b) of the EPF & MP Act and statutory contribution is payable on these emoluments in terms of Sec 6 of the Act. Further, as per the statutory provisions the contribution under the Act becomes payable as soon as the wages become due or payable and not on actual payment. In the case of wage revision from retrospective dates the actual contribution due and payable by the employer in respect of an employee under the Act in a particular month will be as per the

revised wages and the remittance of the differential contribution on a later date regardless of the reason for such delay will have to be treated as belated remittance and the employer is also statutorily liable to pay penal damages for belated remittance of contribution. Hence when the wages are revised from a retrospective date and arrears are paid a statutory liability is cast upon employer to deduct employees' share of contribution from the arrears and remit the same along with his own share of contribution at the time of disbursement of arrears. When existing pay scales are revised with effect from back date and the revised wages are paid retrospectively. The contribution payable for the back period will be on the basis of revised salary. The contribution remitted by the employer on arrears of wages are to be considered as dues for the back period. While accounting the contribution retrospectively, it becomes imperative on the part of the employer to pay damages as the respondent organisation is legitimately bound to extend the statutory benefits to the employees. The appellant never raised any contentions before the respondent authority except the Annexure A4 reply statement filed by him. Hence the appellant cannot raise new issues which were not taken before the



respondent authority for the first time in the appeal. The Hon'ble Supreme Court of India in ***Hindustan Times Limited Vs Union of India and others***, 1998(2) SCC 242 held that there is no period of limitation prescribed by the legislature for initiating action for recovery of damages U/s 14B. The Hon'ble Supreme Court also held that the delay if any in initiating action U/s 14B will only help the employer as the employer is holding the money which is liable to be remitted to the respondent organisation. The law laid by Hon'ble High Court of Kerala in ***Indian Telephone Industries, Palakkad Vs APFC Kozhikode*** (supra) is no more a good law as the Hon'ble Division Bench of High Court of Kerala modified the said order holding that the decision is not sustainable for the reason that the declaratory relief granted by the learned Single Judge in the said Writ petition is impermissible in law. The appellant cannot ignore the statutory liability cast upon him as an employer under Paras 30 and 38 of EPF Scheme to remit the monthly contribution payable under various accounts invariably within 15 days' of close of every month in respect of all the eligible employees in the rolls. The Hon'ble Supreme Court of India in ***Organo Chemicals Vs Union of India***, 1979 (002)LLJ 416 SC

held that Sec 14B is a warning to the employer in general not to commit breach of the statutory requirements as stipulated U/s 6 of the Act. In ***Chairman, SEBI Vs Sriram Mutual Fund***, AIR 2006 SC 2287 the Hon'ble Supreme Court of India held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act and that penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and therefore, the intention of the parties committing such violation becomes immaterial.

5. The respondent initiated Act U/s 14B of the Act read with Para 32A of EPF Scheme for belated remittance of contribution. Initially the respondent issued order assessing damages only for part of the belated payment of contribution, which was challenged the Hon'ble High Court of Kerala in WPC No.6981/2016. The respondent authority withdrew the order during the pendency of the Writ petition. The Hon'ble High Court of Kerala disposed of the Writ petition directing the respondent to pass fresh proceedings as per law. Accordingly the respondent initiated fresh proceedings to assess the damages for belated remittance of contribution. The respondent issued notice to the appellant along with the delay statement

and also provided an opportunity for personal hearing to the appellant. A representative of the appellant attended the hearing and filed a written statement which is produced as Annexure A4. The basic contention raised in Annexure A4 representation was that the delay in remittance of contribution was due to retrospective revision of wages of employees in two stages. The appellant also pointed out that certain payment made in time was also included in the assessment. After considering the issues raised in the representation the respondent issued the impugned order.

6. One of the main grounds pleaded by the appellant is with regard to delay in initiating Section 14B proceedings. It is a settled position that no limitation is provided under the Act and therefore the delay in initiating action for levying damages cannot be a valid ground for vitiating the proceedings U/s 14B of the Act. In ***RPFC Vs KT Rolling mills Pvt Ltd***, 1995 AIR(SC) 943 the Hon'ble Supreme Court held that there is no limitation provided under the Act and any different stand would encourage the employers to thwart the object of the Act. In ***M/s K Street Lite Electronics Company Vs Provident Fund Commissioner***, 2001 (4) SCC 449 the Hon'ble Supreme Court held that delay in

initiating proceedings U/s 14B of the Act will not be a ground for setting aside an order imposing damages. In ***Hindustan Times Ltd***, (Supra) the Hon'ble Supreme Court held that "This in our opinion it is significant and it is clear that it is not that the legislative intention to prescribe any period of limitation for computing and recovering the damages". The Hon'ble Supreme Court also held that the delay in initiating the process for assessing and recovering damages will only be helpful to the employers as they will be in a position to utilise the money for their own business purposes. Another contention by the appellant is with regard to the delay in remittance of contribution consequent on revision of wages retrospectively given to its employees by the appellant. The learned Counsel for the respondent argued that the liability to pay contribution is decided on the basis of basic wages due as on the date of remittance of contribution and therefore the appellant is liable to pay damages on the remittance of contribution of arrears on wages paid by them. Though the appellant is liable to remit contribution on arrear of wages and is also liable to pay damages if the contribution is accounted from a retrospective due month, no mensrea can be attributed for the delayed

remittance of contribution as the appellant was not even aware of the actual contribution payable from the due date of wage revision. However when the remittance are made from a retrospective date the respondent is liable to pay higher benefits to the employees from the due date of eligibility. This will definitely attract additional cost on the side of the respondent and the appellant is liable to compensate the same.

7. Considering the facts, circumstances and pleadings in this appeal I am inclined to hold that the interest of justice will be met if the appellant is directed to pay 70% of the damages.

Hence the appeal is partially allowed and the impugned order is modified and the appellant is directed to remit 70% of the damages assessed under Section 14B of the Act.

Sd/-  
**(V. Vijaya Kumar)**  
Presiding Officer