



सत्यमेव जयते

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

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

(Tuesday the 6th day of April, 2021)

APPEAL No.273/2019 & 685/2019

Appellant :: M/s. Churakulam Tea Estate Pvt. Ltd.,
Vandiperiyar
Idukki – 685 533

By Adv. K.V. Gopinathan Nair

Respondent : The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam - 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 19.02.2021
and this Tribunal-cum-Labour Court on 06.04.2021 passed
the following:

ORDER

Appeal No. 273/2019 is filed from order No. KR/
KTM/407/ APFC / Penal Damage/14B/ 2018-19/3094 dt.
03/01/2019 assessing damages U/s 14B of EPF & MP Act,
1952 (hereinafter referred to as 'the Act') for belated

remittance of contribution for 08/2015 (remittance of EPF dues between 12/01/2017 and 30/09/2018). The total damages assessed is Rs. 85,664/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. **Appeal No.685/2019** is filed against Order No.KR/KTM / 407 / APFC / PD /14B/2019-20/3640 dt. 19/09/2019 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period 08/2015 to 08/2017 (remittance of EPF dues made during the period 10/2018 and 30/06/2019). The total damages assessed is Rs. 4,31,130/-

3. The appellant is a Company registered under the Company's Act 1956. From the year 2003, the plantation industry is facing acute financial crisis and the Association of Planter of Kerala notified the members that the Plantation Standing Committee which met on 21/06/2003 had decided to recommend exemption from Plantation Tax for Tea and Coffee for the current year. The Government of Kerala vide notification dt. 04/06/2004 exempted the plantation industry from payment

of Plantation Tax. On 15/06/2005 the trade unions declared a strike in the appellant's factory. On 14/08/2009 there was major fire in the tea factory building of the appellant and damages worth Rs. 4.72 crores have been caused to the factory. With labour cost increasing like never before and the falling prices of tea created a huge financial crisis for the appellant establishment. Almost all factories in the state are on the verge of shutting down with ever amounting loss and labour problems. While so the appellant received notice from the respondent authority directing to show cause why damages shall not be levied for belated remittance of contribution. In ***APFC and Another Vs Management of RSL Textiles India Pvt. Ltd***, 2017(3) SCC 110 the Apex court held that in the absence of a finding regarding mensrea on the part of the employer, action U/s 14B cannot be sustained. The proceedings for assessing damages was initiated after long delay and therefore had in law. The belated remittance of contribution was not deliberate or intentional and there is no mensrea in belated remittance of contribution.

4. The respondent filed counter denying the above allegations. Admittedly there was delay in remittance of provident fund contribution. When there is delay in remittance of contribution, damages U/s 14B of the Act is attracted. Hence a show cause notices was issued to the appellant to explain the delay in remittance of contribution. The appellant was represented in the hearing. He admitted the delay in remittance of contribution as per the delay statement forwarded to him along with the notice. However he pleaded for waiver of damages since the delay was due to financial difficulties. The appellant failed to produce any document to substantiate the claim of financial difficulties before the respondent authority. The Hon'ble Supreme Court considered the plea of financial difficulty for non-remittance of provident fund contribution in ***Hindustan Times Ltd Vs Union of India***, AIR 1998 SC 682. The Hon'ble Supreme Court held that the default on the part of the employer based on the plea of power cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by cheques or drafts cannot be justifiable grounds for the employer to escape liability. The claim of the appellant that plantation industry was in financial crisis since 2003 is not supported by

any evidence. There is no averment in the appeal that the so called crisis extended to 2015-17. The Hon'ble Supreme Court in ***Organic Chemical Industries Vs Union of India***, 1979 (2) LLJ 416 SC observed that even if its assumed that there was loss, it does not justify the delay in deposit of money which is an unqualified statutory obligation on the part of the employer and cannot be allowed to be linked with the financial position of the establishment over different points of time. In ***Calicut Modern Spinning & Weaving Mills Vs RPFC***, 1992 LAB IC 1422 the Hon'ble High Court of Kerala held that Para 38 of EPF Scheme obliged the employer to make payment within 15 days of close of every month and Para 30 of the scheme cast an obligation on the employer to pay both the contribution payable by him and on behalf of the member employed by him in the first instance. Hence the delay by appellant in remittance of contribution under the Act was willful and deliberate. The appellant is a chronic and habitual defaulter and a habitual litigant who violated the judgments of the Hon'ble High Court of Kerala on many occasions. In WPC No. 6057/2016 the Hon'ble High Court granted 18 installments to remit interest U/s 7Q vide order dt.17/02/2016. Though the installment period is over the

appellant is yet to pay an amount of Rs.2,37,803/-. In WPC No. 9855/2019 the Hon'ble High Court vide judgment dt. 23/03/2017 granted 24 installments to remit the contribution for the period from 07/2015 to 06/2016. An amount of Rs. 25,22,024/- is still outstanding. In the same judgment the Hon'ble High Court granted installment for remitting interest U/s 7Q for the period from 04/2013 to 10/2016 in 24 installments. The appellant defaulted in the installments and an amount of Rs.5,48,925/- is still outstanding. In Writ Petition No. 38394/2017 the Hon'ble High Court of Kerala vide judgment dt. 29/11/2017 granted 12 installments to remit the provident fund contribution for the period from 07/2016 to 03/2017. Though the time granted by the Hon'ble High Court is over the appellant paid only one installment and an amount of Rs.14,80,545/- is still outstanding. In ***New Commercial Mills Company Ltd Vs Union of India*** the Hon'ble High Court of Gujarat held that where the employer is habitual defaulter in respect of payments under the Act, the financial hardship or constraints is not sufficient to mitigate the damages. In ***Hindustan Times Vs Union of India*** (*supra*) and Punjab and Haryana High Court ***in Elson Cotton Mills Vs RPF***, 2001 SCT (1) 1101 (P&H) (DB)

held that there is no bar of limitation for proceedings U/s 14B of the Act.

5. The only ground pleaded by the appellant for belated remittance of contribution is the financial difficulties of the appellant. As rightly pointed out by the learned Counsel for the respondent the appellant has pleaded the financial difficulties and interference by the State and Central Governments during 2003. There is no pleading in the appeal regarding the financial status of the appellant establishment during 2015-17, the relevant period for which the proceedings U/s 14B and 7Q was initiated. The appellant failed to produce any documents to support the claim of financial difficulties before the respondent authority during the course of Sec 14B enquiry. The appellant also failed to produce any document to substantiate their claim of financial difficulties in this appeal also. It is a consistent view of the courts that when financial difficulties are plead by the appellant for delayed remittance of contribution it is upto the appellant to plead and substantiate the same before the authority U/s 14B of the Act

6. The Hon'ble High Court of Delhi in ***Kee Pharma Ltd Vs APFC***, 2017 LLR 871 held that the appellant shall produce documents before the respondent authority to substantiate their claim of financial difficulties. If the appellant failed to do so his claim for reduction of damages on financial ground cannot be accepted. In ***Assistant PF Commissioner Coimbatore Vs EPF Appellate Tribunal***, New Delhi and ***M/s. Sree Rani Laxmi Ginning Spinning and Weaving Mills Ltd***, WPC No 4633/2012 the Hon'ble High Court of Madras held that if the appellant company failed to produce documents to substantiate their claim any reduction of damages is in violation of Sec.14B. As already stated that the appellant failed to produce any document to substantiate their claim of financial difficulties before the respondent authority as well as in this appeal. In the absence of any such evidence the claim of the appellant for reducing the wages on the ground of financial difficulties cannot be considered. The Hon'ble High Court of Kerala in ***Sree Kamakshy Agencies Pvt. Ltd Vs. EPF Appellate Tribunal and Elston Tea Estate Vs RPFC***, held that financial constrains have to be demonstrated before the authority with all cogent

evidence for satisfaction to arrive at a conclusion that it has to be taken as a mitigating factor for lessening the liability.

7. Another ground pleaded by the learned Counsel for the appellant is that of mensrea. According to the learned Counsel for the appellant contributions could not be paid due to financial difficulties and for reasons beyond the control of the appellant. In ***Sreekamakshy Agency Pvt Ltd Vs EPFC Appellate Tribunal***, WPC No.10181 of 2010, the Hon'ble High Court of Kerala held that while assessing damages mitigating circumstances shall be considered. In ***Elston Tea Estate Ltd Vs RPFC***, WPC No. 21504/2010 the Hon'ble High Court of Kerala held that quasi judicial function though may be a part of organizational hierarchy, nevertheless, warrants independent impartial decision on a dispute in terms of statutory provision. In ***Standard Furnishing (Unit of Sudarshan Trading) 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 remitting PF Contribution had to be factored by the authorities concerned before issuing the order. As already pointed out in earlier paras the appellant failed to produce any document to support his

claims of financial difficulties or any other related difficulties before the 14B authority and in this appeal. As pointed out by the Hon'ble High Court of Kerala **in *Elston Tea Ltd case (supra)*** it is the responsibility of the appellant to establish the claims before the respondent authority. Having failed to do so, the appellant cannot claim any relief under the provisions of the Act. The learned Counsel for the appellant also argued that there was no intentional delay in remitting the PF contribution. The learned Counsel for the respondent pointed out that the even the employees' share of contribution deducted from the salary of the employees were not deposited in time by the appellant. The appellant has no case that there was delay in payment of wages and even if it is so the appellant failed to produce any records to prove the same. In the absence of any document to substantiate the claim of the appeal it is not possible to conclude that there were mitigating circumstances warranting the interference by this Tribunal in the impugned orders of the respondent.

8. It was also pleaded by the learned Counsel for the respondent that the appellant is a chronic defaulter and is not complying with the provisions of the Act regularly. He has also

furnished the details of various cases in which the appellant approached the Hon'ble High Court of Kerala and in which the Hon'ble High Court granted installment facility to clear the dues and interest. It is pointed out by the learned Counsel for the respondent that the appellant has not complied even with the directions and installments granted by the High Court to facilitate compliance by the appellant.

9. It was pleaded in the appeal that there was no intentional delay in the remittance of provident fund contribution. The learned Counsel for the respondent pointed out that the appellant has no case that the wages of the employees for the relevant period of time is not paid by the appellant. When wages are paid the employees share of contribution which amounts to 50% of the total contribution is also deducted from the salary of the employees. Non-remittance of the employees' share of contribution is an offence U/s 405 & 406 of Indian Penal Code. Having committed an offense of breach of trust the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the contribution.

10. It is also pleaded that there was delay in initiating the process to assess damages U/s 14B of the Act. The Hon'ble Supreme Court in ***Hindustan Times Ltd Vs Union of India*** (supra) has categorically held that there is no limitation for initiating action U/s 14B of the Act and same cannot be pleaded as a ground in the proceedings.

11. Considering all the facts, circumstances and pleadings I am not inclined to interfere with the impugned orders U/s 14B of the Act.

13. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7(O) of the Act. On perusal of Sec 7(I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court of India in ***Arcot Textile Mills Vs RPFC***, AIR 2014 SC 295 held that no appeal is provided U/s 7(I) from an order issued U/s 7Q of the Act. In ***District Nirmithi Kendra Vs EPFO***, WP (C) No. 234/2012 the Hon'ble High Court of Kerala also held that no appeal can be filed from an order issued U/s 7Q of the Act.

Hence the impugned orders U/s 14B are dismissed as there is no merit in the appeals. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer