



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

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

(Wednesday the 2nd day of June, 2021)

APPEAL No.707/2019

(Old No. ATA 639 (7) 2012)

Appellant

M/s Somatheeram Ayurvedic Beach Resort,
Balaramapuram,
Chowara PO,
Thiruvananthapuram- 683 571.

By Adv. Anil Narayan

Respondent

The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Thiruvananthapuram- 695 004.

By Adv. Ajoy P.B

This case coming up for final hearing on
07/04/2021 and this Tribunal-cum-Labour Court on
02/06/2021 passed the following:

ORDER

Present appeal is filed from order No.KR/
12977/RO/TVM/PD/VK/2012/3617 dt.18/05/2012 assessing
damages U/s 14B of EPF and MP Act, 1952 (hereinafter referred
to as 'the Act') for belated remittance of contribution for the

period 03/2010 to 02/2011. The total damages assessed is Rs.1,62,635/-.

2. The appellant is engaged in the hotel business and is covered under the provision of the Act. There was delay in remittance of contribution and the delay was not willful or deliberate. The respondent assessed dues on short remittance for the period from 03/2010 to 02/2011 and the assessed dues were remitted immediately. The appellant was offered a personal hearing. The appellant attended the hearing and submitted that the delay was due to reasons beyond the control of management. The respondent has not disclosed the details of calculation of damages before imposing the damages. In the hearing dt.16/05/2012 the appellant submitted that the delay in remittance was due to financial difficulty which was beyond the control of management. The U/s 14B of the Act as it stands now is purely punitive in nature and therefore the respondent is bound by the guidelines for conducting a quasi criminal proceeding. In ***M/s Hindustan Steel Ltd Vs State of Orissa***, AIR 1970 SC 253 the Hon'ble Supreme Court held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceedings, and penalty will not

ordinarily be imposed unless the party obliged either acted or deliberate in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

3. The respondent filed counter denying the above allegations. The appellant establishment is an Ayurvedic Beach Resort and is covered under the provision of the Act. The appellant delayed the payment of statutory dues for the period 03/2010 to 02/2011. Any delay in remittance of statutory contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence the notice dt.01/05/2011 was issued to the appellant to show cause why damages shall not be levied for delay in remittance of contribution. The appellant was also given an opportunity for personal hearing on 16/05/2012. A detailed statement showing the delay in furnishing the due date payment, the actual dated payment, the delay in remittance and proposed damages was also forwarded to the appellant along with the notice. A representative of the appellant attended the hearing, admitted the delay and agreed to remit the damages at the earliest. Taking into account the relevant facts, the respondent issued the impugned order. The claim of

the appellant that he was regular in compliance is not correct. The claim of the appellant that the delay was not due to any deliberate act or willful defiance is also not substantiated by the appellant. The Hon'ble Supreme Court of India has denied the claim of financial difficulty for delayed remittance of contribution in ***Organo Chemicals Vs Union of India***, 1979 (002) LLJ 416 SC and ***M/s Hindustan Times Ltd Vs UOI & Others***, AIR 1998 SCC 688. The claim of the appellant that the impugned order is not speaking order is denied by the respondent. The appellant admitted the liability under the Act and agreed to remit the damages immediately. Since there was no contention raised by the appellant before the respondent authority there was no occasion for the respondent authority to issue a speaking order. The Hon'ble Supreme Court in ***Hindustan Times case*** (Supra) held that default on the part of employer based on the plea of power cut, financial problem etc cannot be a justifiable ground for the employer to escape from the liability. Even if it is assumed that there was a loss as claimed it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot

allowed to be linked with the financial position of establishment over different points of time.

4. The only ground pleaded by the appellant for the delayed remittance of contribution is that of financial difficulty. It is a settled legal position that when the appellant claims financial difficulty as a reason for delayed remittance of contribution it is upto the appellant to substantiate the claim of financial difficulty. The appellant failed to produce any evidence to support financial difficulty before the respondent authority as well as in this appeal. In ***Steel Industrials Kerala Ltd Vs APFC***, W.P.(C) No 29645 of 2014, the Hon'ble High Court of Kerala held that " Para 7. Further, it is to be noticed that the petitioner's contentions against imposition of Sec 14B damages are available in Exbt.P2 and P4. Exbt.P2 and P4 are glaring, in so far as there is absolutely no material available to find financial crisis. The mere statement of financial crisis cannot lead to mitigation of damages U/s 14B". The Hon'ble High Court of Kerala in ***Sreekamakshy Agency Pvt Ltd Vs EPF Appellate Tribunal and Another***, 2013 (1) KHC 457 also held that if the employers produce supporting documents to prove financial constraints, the respondent authority shall consider the same in

a an appropriate manner whether the financial constraints can be taken as mitigating circumstance to reduce or waive penal damages. The Hon'ble High Court of Kerala in ***Elstone Tea Estates Ltd Vs RPFC***, W.P.(C) No.21504/2010 also held that the claim of financial difficulty as a mitigating circumstance should be proved before the respondent authority through documentary evidence to the satisfaction of the authority to claim any relief in damages U/s 14B of the Act. The learned Counsel for the respondent also pointed out that there was no reason to issue a considered speaking order in this case, as the representative of the appellant who appeared before the respondent authority admitted the delay and also the proposed damages in the notice and also agreed to remit the same immediately.

5. Considering the facts, circumstances and pleadings in this appeal I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer