



सत्यमेव जयते

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

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

(Tuesday the 27th day of April, 2021)

APPEAL No.75/2019

(Old No. ATA 471(7) 2014)

Appellant

M/S Veekshanam Printing & Publishing
Company Limited,
Veekshanam Road
Kochi -682018

By Adv. P.Ramakrishnan

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor,
Kochi -682017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on
23/02/2021 and this Tribunal-cum-Labour Court on
27/04/2021 passed the following:

O R D E R

Present appeal is filed from order No. KR / KC/
4837 / Damages Cell / 2014 /17641 dt. 05/03/2014
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 12/1992 to 02/2012. The total damages assessed is Rs. 8,99,832/-.

2. Appellant is an establishment registered under the Company's Act 1956 and running a vernacular daily. The appellant establishment is closed down in the year 1996 on account of financial difficulties. All the employees on the rolls of the appellant establishment had left service. The appellant establishment had subsequently started functioning in a small way in the year 2005. The appellant is still running under heavy loss and is finding it even difficult to pay the wages of its employees. Because of the financial situation there was delay in remittance of provident fund contribution for the provident fund from 1992 to 1996. Even after the establishment re-started its functioning, there delay in remitting contribution. The delay was not because of any willful or deliberate reasons. The respondent issued a notice dt. 18/10/2013 directing the appellant to show cause why damages U/s 14B shall not be levied for the belated remittance of contribution for the period from 1992 to 2012. A true copy of the notice dt. 18/10/2013 is produced and marked as Annexure A1. A representative of the appellant attended the hearing and

appraised the paucity of funds as the reason for belated remittance of contribution. The respondent issued the impugned order without considering the representation of the appellant. The appellant thereafter served a demand notice dt. 21/05/2014 seeking remittance of total amount of Rs. 11,74,470/. The amount includes the damages and also interest U/s 7Q of the Act. A true copy of the demand notice is produced and marked as Annexure A3. Sec 14 B of the Act as well as Para 32A of EPF Scheme do not mandate imposition of damages in all cases. The respondent authority has discretion to consider the mitigating circumstances of the appellant. The Division Bench of the Hon'ble High Court of Kerala in ***Regional PF Commissioner Vs Harrisons Malayalam Ltd***, 2013 (3) KLT 790 held that existence of mensrea or actus reus to contravene a statutory position must also be held to be a necessary ingredient for levy of damages and the quantum thereof. After the amendment of Section 14B the compensatory element is taken out and the interest is added U/s 7Q of the Act. The sliding table in Para 32A of EPF Scheme has been amended w.e.f 26/09/2008 reducing the damages to 5,10,15 & 25 thereby reducing

12% which again confirms the fact that the compensatory element is taken out of the Para 32 A by introduction of Sec 7Q. Eventhough the appellant establishment is not working for the period 1996 to 2006. The appellant assessed damages for that period as well.

3. The respondent filed counter denying the above allegations. The appellant establishment is engaged in the newspaper industry and is therefore covered under the provision of the Act w.e.f 28/02/1979. Alongwith the order issued U/s 14B, the appellant has also challenged the recovery notice issued by the Recovery Officer of the respondent authority. No appeal is maintainable against the recovery action as per sec 7(I) of the Act, and therefore the challenge of the appellant against the recovery notice may not be entertained by this Tribunal. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court of India held that even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked with the financial position of the establishment over different points of time. The appellant

admitted the fact that there was delay in remittance of provident fund contribution. The representative who attended the hearing also admitted the delay furnished in the delay statement forwarded to the appellant along with the summons. The representative of the appellant raised no other ground before the 14B authority and therefore the appellant shall not be allowed to raise new issues in this appeal. The reasoning of the Hon'ble High Court of Kerala in **Regional PF Commissioner Vs Harrison Malayalam Ltd** (Supra) is not at all applicable to the present appeal. In **Harrisons Malayalam** case (Supra) the delay in remittance of contribution was caused due to the stay granted by the Hon'ble High Court while implementing Pension Scheme 1995. There was also severe financial crisis in the plantation industry during the relevant point of time. The establishment was otherwise regular in compliance. Whereas the appellant establishment herein is a chronic defaulter. There are many orders issued by the respondent for the period from 04/1979 till date, U/s 7A, 14B and Sec 7Q of the Act. The respondent elaborated the details of the default in the written statement. In **Chairman, SEBI Vs Sriram**

Mutual Fund, Civil Appeal No. 9523-9524/2003 the Hon'ble Supreme Court of India held that mensrea is not an essential ingredient for contravention of provision of Civil Act. Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and regulation is established and hence the intention of parties committing such violation becomes wholly irrelevant. In **Hindustan Times Ltd Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court of India held that bad financial condition of an establishment is no defense for the delayed deposit of provident fund contribution. The appellant cannot ignore the statutory liability cast upon an employer under Para 30 & 38 of EPF Scheme to remit the monthly contribution invariably within 15 days of close of every month. The liability of an employer under the Act arises the movement the wages are earned by the members irrespective of whether it is actually paid or not. The contribution delayed by the appellant included approximately 50% of the contribution deducted from the salary of the employees. The appellant cannot attribute any financial difficulties for not remitting the same within the stipulated time. In **Maharashtra**

State Co-Operative Bank Ltd. Vs Assistant PF Commissioner, 2009 (1) SCC 123 the Hon'ble Supreme Court of India held that any amount due from an employer includes the liability of the employer to pay interest in case the payment of amount is delay and also their liability to pay damages if there is any default in making contribution to the fund.

4. There was delay in remittance of provident fund contribution for the period from 12/1992 to 02/2012. Hence the respondent initiated action U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent issued summons along with a detailed delay statement which is produced as Annexure1 by the appellant. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and admitted the delay statement forwarded by the respondent. According to the learned Counsel for the respondent the appellant did not raise any other ground before 14B authority and therefore the respondent authority issued the impugned order assessing damages. According to him the claim of financial difficulties for the delay in remittance is first time raised in this appeal. The

appellant failed to produce any documentary evidence to substantiate their claim of financial difficulties before the respondent authority or in this appeal. It is settled law that when the appellant is pleading financial difficulties it is upto him to substantiate the claim through documentary evidence. In ***M/s. Kee Pharma Ltd Vs APFC***, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In ***Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal***, 2013 1 KHC 457 the Hon'ble High Court of Kerala held that the respondent authority shall consider the financial constraints as a ground while levying damages U/s 14B **if the appellant pleads and produces documents to substantiate the same.** In ***Elstone Tea Estates Ltd Vs RPFC***, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. Since the

appellant failed to produce any documents it is not possible to evaluate the extent of financial difficulties or even if there is financial difficulties whether it can be taken as a mitigating circumstance to reduce the damages. However according to the learned Counsel for the appellant the appellant establishment was closed for the period from 1996 to 2006 because of the financial difficulties. The claim of the learned Counsel for the appellant is not disputed by the respondent. However on perusal of the Annexure A1 produced by the appellant it is seen that there was no contribution paid by the appellant for the period from September 1996 to November 2005 except for a few interim payments during 1997. The learned Counsel for the appellant also pointed out that damages were levied even for the period when the appellant establishment remained closed. The learned Counsel for the respondent pointed out that the appellant has no case that there was delay in payment of wages to the employees. Even if there is such a claim, the same is not substantiated by the appellant. When the salary of the employees are paid the employee share of contribution which amounts to 50% of the total contribution is

deducted from the salary of the employees. Non-remittance of the employees' share of contribution deducted from the salary of the employees is an offence under Sections 405 & 406 of Indian Penal Code. On a perusal of Annexure A1 it can be seen that the delay in remittance of contribution is upto 506 days and the appellant was holding the employee share of contribution deducted from the salary of the employees for more than a year. Having committed an offence of breach of trust the appellant cannot plead that there is no mensrea in belated remittance of contribution atleast to the extent of the employees' share of contribution deducted from the salary of the employees. Though the appellant failed to substantiate the financial difficulties, the claim of the appellant that the appellant establishment remained closed for many years due to financial difficulties is not disputed. Hence the appellant is entitled for some relief as far as damages U/s 14B is concerned.

5. Considering the facts, circumstances and pleadings in this appeal I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of damages assessed U/s 14B of the Act.

6. The learned Counsel for the respondent also raised an issue regarding maintainability of the appeal against the recovery demand notice issued by the Recovery Officer of the respondent U/s 8 of the Act. The appeal is filed U/s 7(I) of the Act and Sec 7(I) does not provide for any appeal from a Recovery action U/s 8 of the Act. Hence no appeal is maintainable against an order issued by the Recovery Officer of the respondent U/s 8 of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is direct to remit 70% of the damages assessed U/s 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer