



सत्यमेव जयते

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

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

(Monday the 21st day of December, 2020)

APPEAL No.12/2017

Appellant : M/s.Kerala State Bamboo
Corporation Ltd
P.B.No.20, Angamaly South
Ernakulam - 683573

By M/s.B.S.Krishnan Associates

Respondent : The Regional PF Commissioner
EPFO, Regional Office, Kaloor
Kochi – 682017

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 24.11.2020 and this Tribunal-cum-Labour Court on 21.12.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/3341/DAMAGES CELL/T(SPL)/2016/15355 dt.10.03.2017 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 10/1994 to 09/2015. The total damages assessed is Rs.4,25,844/-.

2. The appellant establishment is a Govt company registered under Companies Act. The appellant is engaged in promoting the welfare of traditional bamboo workers by undertaking manufacture, marketing and sale of various bamboo products. The appellant is covered under the provisions of the Act and was regular in compliance. The appellant received a summons dt.01.04.2016 along with a delay statement directing the appellant to show cause why damages U/s 14B shall not be levied against the appellant. The appellant filed a representation dt.19.05.2016 stating that for the period from 10/1994 to 06/1996 the delay in remittance of contribution was due to the assessment made by the respondent regarding omitted wages. For the period from 03/2014 to 09/2014 the delay was due to the financial crisis of the appellant corporation. A true copy of the said representation is marked as Annexure 2. The Hon'ble High Court of Kerala in W.P.(C) no.16957/2015 has granted 12 instalments to remit the contribution for the period from 03/2014 to 09/2014 along with interest. Accordingly an amount of Rs.23,31,822/- was remitted in 12 equal instalments. There was a long delay of 3 to 14 years in initiating action U/s 14B of the Act. The respondent is given the discretion to levy damages in accordance with the circumstances of each case. The respondent failed to exercise that discretion. In the facts and circumstances explained above, there

was no mensrea or any contumacious conduct on the part of the appellant in delayed payment of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is a chronic and persistent defaulter in remittance of statutory provident fund contribution from the date of coverage. The remittance of contribution U/s 6 of the Act is a statutory obligation. Any delay in remittance of contribution will attract damages U/s 14B read with Para 32 A of EPF Scheme. The respondent therefore issued notice dt.01.04.2016 to the appellant along with a delay statement to show cause with documentary evidence as to why penal damages U/s 14B of the Act shall not be levied against the appellant for bleated remittance of contribution for the period from 10/1994 to 09/2015. The appellant was also given an opportunity for personal hearing on 19.05.2016. A representative of the appellant attended the hearing and submitted that the appellant corporation is a loss making unit for past several years and the matter has been referred to BIFR for declaring the appellant as a 'sick' unit. There was no dispute regarding the delay statement sent along with the notice. In **Hindustan Times Ltd Vs UOI and Others**, 1998 2 SCC 242 the Hon'ble Supreme Court of India held that " there is no period of limitation prescribed by the legislature for initiating action for recovery of damages U/s 14B. The fact that the proceedings are initiated or demand for

damages is made after several years cannot by itself be a ground for drawing an inference of waiver or the employer was lulled into a belief that no proceedings U/s 14B would be taken. Mere delay in initiating action U/s 14B cannot amount to prejudice in as much as the delay on the part of the Department would have only allowed the employer to use the monies for his own purpose or for his business especially when there is no additional provision for charging interest".

A statutory liability is cast upon the appellant under Para 30 and 38 of EPF Scheme to remit the monthly contributions payable under the Act within 15 days of close of every month. The liability of the appellant under the Act arises the moment the wages are earned by the members, irrespective of whether it is actually paid or not. Any delay in remittance of contribution will therefore attract damages U/s 14B of the Act. In **Organo Chemical Industries Vs UOI** 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the purpose of introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contributions to the funds most often with the ulterior motive of misutilising not only their own but also the employees contribution. The Hon'ble Supreme Court also observed that the pragmatic of the situation is that if the stream of contribution were frozen by employer's default after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of funds. Approximately 50% of the contribution payable

by the employer represents employees' share of provident fund contribution actually deducted from the salary of the beneficiary employees. The appellant cannot attribute any financial difficulties for not remitting the same regularly every month within the time stipulated under Para 30 and 38 of EPF Scheme. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provisions of the civil Act and penalty is attracted as soon as the contravention of the statutory obligations as contemplated by the Act is established. The intention of the parties committing such violation becomes immaterial.

4. The only ground pleaded by the learned Counsel for the appellant for reducing or waiving damages is that of financial difficulties. The learned Counsel for the appellant also pointed out that there was a delay in initiating the proceedings U/s 14B of the Act for assessing damages for belated remittance of contribution for the period from 10/1994 to 09/2015. As already pointed out, the Hon'ble Supreme Court in **Hindustan Times** case (Supra) has clarified that there is no limitation provided for initiating action U/s 14B of the Act. Further the Hon'ble Supreme Court also pointed out that it is advantage to the management when there is delay, as the appellants will be in a position to utilise the damages due in their business. To substantiate the claim of financial difficulties, the learned Counsel for the appellant submitted that the delay in

remittance of contribution for the period from 10/1994 to 06/1996 was due to some late assessments made by the respondent on omitted wages. Further it was also pointed out that for the period from 03/2014 to 09/2014 the contribution could not be paid in time due to financial difficulties and the appellant approached the Hon'ble High Court of Kerala in W.P.(C) no. 16957/2015 and the Hon'ble High Court vide its order dt.08.06.2015 allowed the appellant to remit the contribution with interest in 12 equal instalments and the appellant remitted the amount as per the direction given by the Hon'ble High Court. The learned Counsel for the appellant also produced the annual reports of the appellant company for the period 2004-05 to 2013-14 and the provisional balance sheet for 31.03.2015 to substantiate the financial difficulties of the appellant establishment. According to the appellant, the net worth of the company has completely eroded and the company is running on financial aid received from the Govt. In the annual report for the years 2013-14 it is seen that there is a net loss of 715 Lakhs and the accumulated loss was to the tune of Rs.3953 Lakhs. From the provisional balance sheet for the year 2014-15 it is seen that there is a further loss of Rs.11.79 Crores. However the claim of the appellant that the delay in remittance was only due to the financial difficulties cannot be accepted. The appellant is a company with approximately 11.86 Crore revenue receipt and the employees benefit expenditure of Rs.5.41 Crores

during 2014-15. Such a company cannot plead financial difficulty alone as a reason for delayed remittance of contribution. The learned Counsel for the respondent submitted that the appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. The appellant has no case that there was delay in payment of wages, due to the financial difficulties pointed out by the learned Counsel for the appellant. The non payment of the employees' share of provident fund contribution which amounts to 50% of the total contribution will amount to an offence U/s 405/406 of IPC. Having committed an offence of breach of trust, the appellant cannot plead that there was no mensrea in belated remittance of contribution atleast to the extend of the employees' share deducted from the salary of the employees. From Annexure 3, proceedings dt.16.04.2013 issued by Govt of Kerala Industrial Department, it can be seen that the net worth of the appellant company was completely eroded as on 2009-10 and the company was advised to initiate proceedings as per Sec 15 of Sick Industrial Companies Act, 1985. This will clearly show that the company was under severe financial strain from the date of its commencement of activities and continues to be so even today. To that extend the appellant is entitled for some relief in the quantum of damages. However the appellant cannot claim any relief as far as

the employees' share of contribution deducted from the salary of employees is concerned.

5. Considering all facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed U/s 14B.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer