



सत्यमेव जयते

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

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

(Friday the 14th day of February, 2020)

APPEAL No.169/2018

Appellant : M/s.Mangalam Web Media Pvt Ltd
Mangalam Complex
S.H.Mount P.O.
Kottayam - 686006

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 16.01.2020 and this Tribunal-cum-Labour Court on 14.02.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/15074/APFC/ PENAL DAMAGE/14B/2018-19/579 dt.18.05.2018 assessing damages U/s 14B of EPF & MP Act, 1952 for belated remittance of provident fund contribution for the period from 03/2012 to 07/2016 for remittance made during 22.03.2013 and 31.03.2017. The total damages assessed is Rs.8,48,767/-.

2. M/s.Mangalam Confectionary Pvt Ltd was a company registered under the Indian Companies Act. The company was engaged in production of confectionary items. The establishment was running under huge loss due to sudden increase in cost of materials. Hence the company stopped production of confectionery items. Subsequently the name of the company was changed as M/s.Mangalam Web Media Pvt Ltd, who is the appellant in this case. M/s. Mangalam Web Media Pvt Ltd took over all the liabilities of the old company. As such the appellant was hold all burden with huge bank loan and debts for the period from 03/2012 to 07/2016. The appellant was running under huge loss. The loss during the year 2013-14 was Rs.28.57 lacs and 2014-15 it was Rs.79.21 lacs and during 2015-16 it was Rs.1.31 Crore and 2016-17 it was Rs.9.96 lacs. The true copies of the Balance Sheet and Profit & Loss account for the period from 03/2012 to 07/2016 are produced and marked as Annexure A1 to A4. Due to the financial difficulties, there was delay in remittance of provident fund contribution. The appellant received a summons from the office of the respondent alleging delay in remittance of contribution for the period from 03/2012 to 07/2016. The appellant appeared before the respondent and filed a detailed written objection which is marked as Annexure A6. The appellant further filed another statement which is marked as Annexure A7. Without considering any of the objections the respondent issued the impugned order. The

language used in Sec 14B of the Act and Para 32A of the EPF Scheme sufficiently indicate that the authority under 14B has got the discretion to reduce or waive damages in appropriate cases. In **RPFC Vs S. D. 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. The Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd**, 2013 (3) KLT 790 held that the officer has to exercise discretion while looking at mitigating circumstances which includes financial difficulties projected by the employer and the quantum of damages has to be decided on the facts and circumstances of each case. In **McLeod Russell India Ltd Vs RPFC**, AIR 2015 SCC 2573 the Hon'ble Supreme Court held that the presence of mensrea would be a determinative factor in imposing damages U/s 14B as also the quantum thereof. The above principle was reiterated by the Hon'ble Supreme Court in **APFC Vs Management of RSL Textiles India Pvt Ltd**, 2017 3 SCC 110. The delay in remittance of provident fund contribution was only due to financial constraints and there was no deliberate defiance of law on the part of the appellant.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. Admittedly the appellant establishment delayed remittance of provident

fund contribution for the wage months from 3/2012 to 07/2016. When there is delay in remittance of provident fund contribution the damages U/s 14B of EPF & MP Act read with Para 32A of EPF Scheme is attracted. The claim of the appellant that they have taken over the loss making M/s.Mangalam confectionary Pvt Ltd is not supported by any evidence. Further there is no evidence to show that the liabilities of M/s.Mangalam confectionary Pvt Ltd have been transferred to the appellant. The appellant has chosen not to disclose material facts as to the so called financial difficulty and suppression of said material facts ought to result in adverse inference against the appellant that the plea of financial difficulty is false. The documents now produced in this appeal were not produced before the authority under 14B. The question whether financial difficulties of an establishment can be considered while levying damages U/s 14B of the Act was elaborately considered by the Hon'ble Supreme Court in **Hindustan Times** case, AIR 1998 SCC 688. The Apex Court categorically observed that financial difficulties cannot be a justifiable ground for an employer to escape the provident fund liability. A representative of the appellant attended the hearing before the respondent authority and filed objections in Annexure A6 and A7. On the basis of the documents produced by the appellant, the respondent excluded the remittances for the month of 8/2012, 8/2013, 11/2013 and 12/2013 from assessment of damages as it was established

that there was no delay in remittance of contribution. After considering and answering all the contentions taken by the appellant, the respondent issued the impugned order. The appellant continuously defaulted in payment of provident fund dues. Further from the Form 12 Return filed by the appellant it can be seen that the appellant had recovered EPF contribution from the employees. Employees share of contribution which amounts to 50% of the contribution was also not remitted with the respondent in time. The delay in remittance by the appellant, a habitual defaulter in remittance of contribution had been willful and deliberate warranting the levy of damages U/s 14B. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPF**, 1982 LAB IC 1422 the Hon'ble High Court of Kerala held that Para 38 of the EPF Scheme obliges the employer to make payment within 15 days of the close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the employees employed by him in the first instance. In **Organo Chemical Industries Vs Union of India**, 1979 LAB IC 1261 the Hon'ble Supreme Court held that Sec 14B is meant to penalize a defaulting employer and it is a warning in general not to commit a breach of the statutory requirements of Sec 6.

4. The main ground pleaded by the learned Counsel for the appellant for reduction of damages is that of financial difficulties. Consequently,

according to him there is no mensrea in delayed payment of contribution and therefore the appellant is entitled for reduced damages. The case of the learned Counsel for the respondent is that the appellant has not produced any document to substantiate their claim of financial difficulties before the respondent authority. Though there was a reference to financial difficulties in Exbt.Annexure A6, no supporting evidence was produced before the authority. The main plea of the appellant before the 14B authority was with regard to some corrections on the basis of certain challans produced by the representative of the appellant. The respondent favourably considered the request and on the basis of the evidence produced the delay in remittance of contribution for 5 months was excluded from assessment. The learned Counsel for the respondent also argued relying on the observation of the Hon'ble Supreme Court in **McLeod Russell India Ltd Vs RPFC**, 2014 (4) SCC 263 that the Appellate authority created by a statute should not substitute their perspective of discretion on that of the lower adjudicatory if the impugned order does not otherwise manifest perversity in the process of decision making. The learned Counsel for the respondent also argued that the law laid down by the Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd** (Supra) is not applicable to the facts and circumstances of the present case. In **Harrison's Malayalam** case, there was a stay granted by the Hon'ble High Court against Employees

Pension Scheme, 1995 which was the main reason for the delay in remittance of contribution. It is seen from the records and documents produced by the appellant in this appeal that salary of the employees were being paid in time to its employees even though there is some payments which were delayed. However it is seen that substantial part of the wages to the employees were paid without any delay. When the wages of the employees are paid, the employees' share of provident fund contribution is deducted from the salary of the employees. According to the learned Counsel for the respondent, even the employees' share of contribution deduced from the salary of the employees was not paid in time by the appellant. Having committed an offence of breach of trust U/s 405/406 IPC, the appellant cannot plead that there is no mensrea in delayed remittance of contribution. It is however seen that the claim of the appellant that they were running under loss from 2012 is substantiated by production of documents in this appeal. However, whether the delay in remittance of contribution was deliberate is not established though the learned Counsel for the respondent pointed out that it is clear from the fact that even the employees' share deducted from the salary of the employees is not remitted in time by the appellant.

5. Considering the above facts and circumstances and also considering the fact that the appellant was continuously under loss for almost 5 years, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed as per the impugned order.

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

Sd/-
(V. Vijaya Kumar)
Presiding Officer