



सत्यमेव जयते

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

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

(Tuesday the 6<sup>th</sup> day of April, 2021)

**APPEAL No.195/2019**  
(Old no.1289(7)2014)

Appellant : M/s.Thiruvananthapuram Taluk  
Educational Co-operative Society Ltd  
Thampanoor  
Trivandrum - 695001

By Adv.S.M.Prem

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Pattom  
Trivandrum - 695004

By Adv.Nita N. S.

This case coming up for admission on 02.03.2021 and the this Tribunal-cum-Labour Court on 06.04.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/5682/RO/TVM/PD/2014/6373 dt.14.11.2014 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 08/2009 to 07/2012. The total damages assessed is Rs.10,12,641/-.

2. The appellant is an educational co-operative society. The appellant is engaged in creating self employment for educated youth by conducting educational activities. The only source of income for the appellant society is the fees collected from the students. Number of students vary from year to year. Due to financial crisis the teachers also forgo the salary or defer the payment of salary for the sake of students who came up training with the appellant establishment. The teachers themselves are running appellant society and is managed through a committee elected through a democratic process. The appellant received a notice dt.19.03.2014 alleging delay in remittance of provident fund contribution. A copy of the notice is produced and marked as Annexure A1. The appellant was also given an opportunity for personal hearing on 17.04.2014 and 19.05.2014. Without considering the request made by the appellant the respondent issued the impugned order. The respondent also demanded interest U/s 7Q of the Act which was remitted by the appellant establishment and thereafter made a request for waiving the damages U/s 14B of the Act. A copy of the request dt.26.11.2014 is produced and marked as Annexure A3. There is no wilful default or negligence on the part of the appellant in making delay payments towards provident fund contribution.

3. The respondent filed counter denying the above allegations. The appellant defaulted in payment of provident fund contribution for the period

from 08/2009 to 07/2012. The delay in remittance of contribution will attract damages U/s 14B of the Act read with Para 32A of EPF & MP Act. Hence a notice dt.19.03.2014 was issued the appellant to show cause why damages as stipulated U/s 14B of the Act shall not be levied against the appellant for belated remittance of contribution. A detailed statement of delay showing month wise contribution, the due date of payment, the actual date of payment and the delay was also communicated to the appellant along with the notice. The appellant was also given an opportunity for personal hearing on 17.04.2014 which was adjourned on the request of the appellant. The representative of the appellant attended the hearing on 19.05.2014 and requested for waiver of damages. The appellant also filed W.P.(C) no.17060/2015 before the Hon'ble High Court of Kerala to stay the recovery proceedings which is still pending. The contribution due to the fund is to be calculated monthly basis on the basic wages, DA and retaining allowance for the time being payable to each employee whether employed by him directly or by or through a contractor. Para 30 of EPF Scheme 1952 states that the employer will have to remit both the contributions in the first instance. As per Para 38 of the Scheme the statutory dues are required to be paid within 15 days of close of every month. The claim of the appellant that being a society there is no distinction between employees and employer and has no bearing with regard to compliance under the provisions of

the Act. The appellant establishment is carrying on with an activity which is notified under the provisions of the Act and therefore the appellant is liable to comply with the provisions of the Act in respect of payment of contribution failing which the consequences will follow. The claim of the appellant that they were covered voluntarily U/s 1(4) of the Act is not correct. The appellant establishment is statutorily covered U/s 1(3)(b) of the Act. The financial difficulties as claimed by the appellant is not a reason for belated remittance of contribution. The Hon'ble Supreme Court in **Hindustan Times Ltd Vs UOI**, 1998 2 SCC 242 held that financial constraints cannot be a reason for belated remittance of contribution. The appellant admitted during the course of enquiry U/s 14B that the remittances were made belatedly. Though the appellant claimed that there was financial difficulties during the relevant point of time, no documents were produced to substantiate the claim. According to the appellant, the only reason for delayed remittance of contribution is that of financial difficulties. According to the appellant the number of students who attended classes and take training from the appellant establishment has gone down considerably and accordingly the fee collected from the students which is the only source of income for the appellant has also gone down. It was also pointed out that the teachers themselves deferred the salary on various occasions because of the financial constraints. The appellant also pointed out

that there was no intentional delay on the part of the appellant in belated remittance of contribution. The learned Counsel for the respondent on the other hand argued that the appellant failed to produce any documents to substantiate the claim of financial difficulties. The appellant also failed to produce any supporting evidence to prove that the teachers deferred their salary to tide over the financial difficulties. It is a settled legal position that the appellant will have to plead and substantially prove the claim of financial difficulties before the authority U/s 14B of the Act. In **M/s.KEE Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that it is the responsibility of the appellant to plead and prove financial difficulties before the respondent authority at the time of Sec 14B hearing. The Hon'ble High Court of Kerala in **Sree Kamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, 2013 1 KHC 457 also 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. Having failed to prove their financial difficulties it is difficult to accept the claim of the appellant in this

regard. The learned Counsel for the appellant also pointed out that the appellant has not proved that there was delay in payment of wages. However when wages are paid to its employees, the employees' share of contribution is deducted from the salary of the employees. Non remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405/406 IPC. Having committed an offence of breach of trust the appellant cannot plead that there was no mensrea in belated remittance of contribution.

4. The appellant is an establishment working in the co-operative sector. Though the appellant failed to substantiate the claim of financial difficulties before the respondent authority, it is a consistent plea that the appellant was facing financial difficulties due to the reduction in the number of students. Considering the above fact, the appellant is entitled for some relief with regard to payment of damages.

5. Considering the facts, circumstances and pleadings it is felt that interest of justice will be met if the appellant is directed to remit 80% of damages assessed U/s 14B.

Hence the appeal is partially allowed, the impugned order is modified, the appellant is directed to remit 80% of damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer