



सत्यमेव जयते

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

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

(Monday the 28<sup>th</sup> day of February, 2022)

**Appeal No.238/2018**

Appellant : M/s. Great India Tour Company (P) Ltd.  
New Corporation Building,  
Palayam  
Trivandrum – 695 033

By Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Pattom,  
Trivandrum – 695 004

By Adv. S. Sujin

This case coming up for final hearing on 01.12.2021 and this Industrial Tribunal-cum-Labour Court on 28.02.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/TVM/12623/PD/2018-19/3296 dt.30.07.2018 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 09/2016 to 07/2017. The total damages assessed is Rs.92,530/-.

2. The appellant is a registered company under the Companies Act engaged in the field of tourism. The appellant was facing financial crisis due to setbacks and economic recession. The appellant was finding it difficult to meet the day to day expenditure during the period 2016-2017. Wages of the employees were being paid in arrears. Accordingly the contribution towards provident fund also got delayed. The appellant received notice from the respondent for enquiry before assessing damages and interest. The appellant filed his reply. The respondent accepted the factum of financial difficulties. However, issued the impugned order in a mechanical way. The Hon'ble High Court of Kerala has held that financial difficulties and mensrea are grounds for considering reduced damages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The Act provides for compulsory deduction of provident fund from the employees and a matching contribution by the employer which is deposited in the workers' account in the respondent's office. Deposits will have to be made on or before 15<sup>th</sup> of the close of the month. There can be no justification in delaying the contribution which is rightfully earned by an employee. The appellant is a chronic defaulter in payment of provident fund contribution. The appellant admitted the delay in remittance before the authority U/s 14B. Financial

difficulties faced by the appellant is not a valid ground for non remittance of statutory dues which includes the employee's share of provident fund contributions deducted from their salary. The representative of the appellant who attended the hearing admitted the delay. Though the appellant establishment pleaded financial difficulties, no documents whatsoever was produced by the appellant before the respondent authority to substantiate their claim. The Hon'ble Supreme Court of India in **Chairman, SEBI Vs Sriram Mutual Fund and another**, 2006 5 SCC 361 held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act. There will be loss of interest if there is delay in remittance of contributions and thereby delay in the investment of the fund. The very existence of the social security system depends upon the timely collection and deposit of the funds. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs UOI**, 1979 AIR SC 1803 held that "this social security measure is a human homage the State pays to Article 39 and 41 of the Constitution. The viability of the project depends on the employer duly deducting the worker's contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function".

4. The case of the appellant is that the establishment was facing financial crisis during the period 2016-2017. The representative of the appellant admitted the delay in remittance. The appellant failed to produce any evidence whatsoever to prove his case of financial difficulties either before the authority U/s 14B nor in this appeal. The appellant failed to produce any documents in this appeal also to substantiate the financial difficulties pleaded by them. 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 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. The Hon'ble Supreme Court of India in **Hindustan Times Vs UOI**, AIR 1998 SCC 688 held that the financial problems of an establishment cannot be a justifiable ground for the employer

to escape the liability. Hence, the grounds of financial difficulties pleaded by the appellant cannot be accepted for reduction in damages.

5. It is a case of the appellant that the delay in remittance of contribution was not intentional. According to the learned Counsel for the respondent, the appellant even failed to remit the employees' share of contribution deducted from the salary of the employees in time. The non remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405/406 of Indian Penal Code. The appellant cannot plead that there was no intentional delay atleast to the extend of 50% of the total contribution being the employees' share of contribution deducted from the salary of employees. The Hon'ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs RPFC**, Civil Appeal no.2136/2012 after referring to its earlier decisions in **McLeod Russell India Ltd Vs RPFC**, (2014) 15 SCC 263 and **EPFO Vs The Management of RSL Textiles India (P) Ltd**, (2017) 3 SCC 110 held that

“ Para 17. Taking note of three-Judge Bench of this Court in **UOI and others Vs Dharmendra Textile Processors and others** (Supra) which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a *sine qua non* for the imposing of levy of

damages U/s 14B of the Act, 1952 and *mensrea or actus reus* is not an essential element for imposing penalty/damages for breach of civil obligations and liabilities”.

6. As already pointed out, the appellant is a chronic defaulter. The appellant pleaded similar grounds in earlier appeals also. The appellant was given some accommodation earlier in the expectation that the appellant will improve its compliance status in future. However it is seen that earlier accommodation only prompted the appellant to commit more defaults.

7. 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