



सत्यमेव जयते

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

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

(Tuesday the 11th day of February, 2020)

**APPEAL No.249/2018
(Old No.A/KL-27/2017)**

Appellant : M/s.Kerala Electrical & Allied Engineering Co.Ltd
Kundara
Kollam - 691501

By M/s.Menon & Pai

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kollam – 691501

By Adv.Pirappancode V.S.Sudheer &
Megha A.

This case coming up for admission on 14.01.2020 and this Tribunal-cum-Labour Court on 11.02.2020 passed the following:

ORDER

Present appeal is filed against order no.KR/KLM/37/PD/2016-17/345 dt.22.02.2017 issued U/s 14B of EPF & MP Act, 1952 assessing damages for belated remittance of provident fund contribution for the period from 11/1995 to 02/2016. The total damages assessed is Rs.1,01,06,588/-.

2. The appellant is a Govt of Kerala undertaking and is engaged in the manufacture of train lighting alternatives for Indian Railways. Due to stiff competition in the market from new companies in the private sector, the appellant was facing acute financial constraints. The appellant was regular in remittance of provident fund contribution. However during the period from 07/2011 to 02/2016 there was considerable delay in getting funds from buyers and therefore there was acute shortage of funds. Hence the salary of the employees could not be paid in time and consequently there was delay in payment of EPF contribution. The respondent initiated action U/s 14B of the Act claiming damages for the period from 11/1995 to 02/2016. It was explained to the respondent that the delay from 07/2011 to 02/2016 was not wilful and there was no mensrea. The delay was due to acute financial crisis in the appellant company. The respondent issued the impugned order assessing damages for the period 07/2011 to 02/2016. The respondent ignored the claim of the appellant that the damages shall be waived since the appellant could not remit the contribution due to the bonafide reason and acute financial constraints. The use of expression "may recover" in Sec 14B of the Act and Para 32A of the Provident Fund Scheme clearly shows that the respondent authority has the discretion while imposing damages under the Act. In **RPFC Vs S.D. College, Hoshiapur**, 1997 (2) LLJ 55. The Hon'ble Supreme Court held that though the Commissioner had no power

to waive the penalty altogether he has the discretion to reduce the damages. The Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 held that the respondent shall consider the delay in remitting contribution when the delay is caused due to reasons beyond the control of the appellant company.

3. The respondent field counter denying the above allegations. The appellant is a wholly owned Govt of Kerala undertaking and an establishment covered under the EPF & MP Act. There was delay in remittance of contribution by the appellant during 07/2011 to 02/2016. The delay in remittance of contribution attracts penal damages U/s 14B of the Act. Hence a notice was issued to the appellant on 06.01.2017 along with a delay statement specifying the amount of dues, due date of payment, actual date of payment, period of delay in remittance and the proposed penal damages U/s 14B of the Act. The appellant was advised to appear before the authority on 17.01.2017 either in person or through a representative. A representative of the appellant attended the enquiry. He submitted a letter dt.17.01.2017 requesting to waive the damages. The representative further pointed out that a remittance shown against 11/1995 in the statement is not made by the appellant and therefore the same should be excluded from the calculation. On verification, it is found that the amount reflected against 11/1995 pertains to an individual member remitted for regularization of his

breaking service for calculation of pension. Accordingly that amount was excluded from the statement. The representative appearing on behalf of the appellant, did not make any further pleadings and accordingly the impugned order is issued. Remitting provident fund contribution on or before 15th of the next month is a statutory duty cast on the appellant establishment by EPF & MP Act. Any delay in remittance of contribution will be met with penal consequences. In **Hindustan Times Ltd Vs Union of India** 1998 (2) SCC 242 the Hon'ble Supreme Court held that "power cut, financial problem relating to other indebtedness or delay in realization of amount paid by cheque or draft are not relevant explanation to avoid the liability for payment of dues". The above decision was followed by various High Courts.

1. **Elsons Cotton Mills Vs RPFC** 2001 (1) SCT 1104(P&H)(DV)

2. **Steel Tubes of India Ltd Vs APFC** 2012 (3) LLJ 603

3. **Allied Electricals & Switch Fuses Vs APFC** , 2003 (2) CLR 925

4. **Sky Machinery Ltd Vs RPFC** 1998 LLR 925

Admittedly there was delay in remittance of provident fund contribution which is a violation of the provisions of EPF & MP Act. As already pointed out financial difficulties by itself is not a ground for belated remittance of contribution.

4. The appellant relied on the decision of the Hon'ble Supreme Court in **RPFC Vs S.D. College**, Hoshiapur (Supra) to argue that though Regional Provident Fund Commissioner has no power to waive penalty altogether, he has the power to reduce damages in appropriate cases. In the present appeal the learned Counsel of the appellant pleaded that there was delay in remittance of provident fund contribution from 07/2011 to 02/2016 because of financial difficulties. To substantiate their claim of financial difficulties the appellant produced statement of Profit & Loss account ending 31.03.2012 to 31.03.2016 as Annexure 1 to Annexure 5. Annexure A1 is an abstract of one page statement which shows the total operation, expenses and Profit & Loss of the company. This document does not disclose the actual financial position of the establishment except that the company is running under loss. The other Annexures also are similar extracts without any details of the financial transactions to finally decide whether there was real financial difficulty which prevented the appellant from remitting the contribution in time. The learned Counsel of the appellant made a plea that the payment of salary itself was delayed during the relevant point of time. However the appellant failed to produce any document to substantiate the arguments and the document produced by them will not in any way support the claim of the appellant that the payment of salary to its employees were delayed. When an establishment

takes the plea of financial difficulties for belated remittance of contribution, it is upto the appellant to prove his claim beyond any reasonable doubt. If the loss reflected in the balance sheet is taken as a ground for reducing or waiving damages, majority of the establishments working in the State will not be liable to pay damages. As rightly pointed out by the learned Counsel for the respondent, the damages are levied as a penal measure to discourage establishments from diverting funds for day to day running of their business. As pointed out by the Hon'ble Supreme Court in various decisions, the survival of social security schemes such as Provident Fund depends on the timely receipt of money into the social security fund and investment of the same by the respondent organization and return the yield to the members of the Scheme in time. If the remittance is delayed the yield from investment also will be directly affected which will ultimately reduce the return to the poor subscribers of the social security scheme. In view of the above, when the establishments takes the plea of financial difficulties for delayed remittance of contribution, it shall be genuine and the claim shall be substantiated through proper evidence.

5. In this particular case, the appellant only succeeded to show that there was loss from 2011-16 but they failed to establish that financial loss was the only reason for belated remittance of contribution. As already pointed out by the appellant failed to establish that the salary to employees

were delayed because of financial difficulties. Considering the above facts and also taking into account of the fact that the appellant is a State Govt undertaking and was running under loss, 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 issued U/s 14B of the EPF & MP Act modified and the appellant is directed to remit 70% of the damages assessed by the respondent.

Sd/-

(V. Vijaya Kumar)
Presiding Officer