



सत्यमेव जयते

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

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

(Tuesday the 19th day of January, 2021)

APPEAL No.252/2019
(Old No.317(7)2015)

Appellant : M/s.The Co-operative Sugars Ltd
Menonpara, Chittur
Palakkad - 678556

By M/s.B.S.Krishnan Associates

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 29.12.2020 and this Tribunal-cum-Labour Court on 19.01.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KKD/0002356000/ENF-4(1)/14B/2014-15/10987 dt.05.01.2015 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 08/2004 to 01/2014. The total damages assessed is Rs.46,30,148/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. Appellant society is a factory registered under the Factories Act, 1948. It has one distillery also. The appellant society is represented by its liquidator. It is engaged in the manufacture of arrack among other things. In the year 1996 the arrack manufacturing was banned in the State of Kerala and the activities of the factory has come to a close in the year 2002. The appellant society is running under huge loss from 2000-01 onwards. During the year 2000-01 the society sustained a loss of Rs.10.49 Crores. Because of the acute financial problems the appellant society was paying wages belatedly and thereby the provident fund contribution was also delayed. The salary of the employees could not be paid since 10/2002. At present the factory and distillery are not functioning due to scarcity of raw materials and lack of funds. The Govt of Kerala announced a package known as SSNP in 2005. A copy of the same is produced and marked as Annexure 1. It has been categorically stated in Annexure 1 that only 50% of the salary would be paid to the employees for which individual undertaking should be furnished. In the year 2005, Govt of Kerala implemented VRS in the society 432 employees accepted the terms of VRS. By that time, the appellant was having a huge financial liability of more than 40 Crores and almost all statutory payments were delayed. Later the Govt of Kerala issued Annexure 2 G.O. and allowed the appellant for drawing an amount of Rs.2001.71 Lakhs as advance from the contingency fund for clearing

the liability of the appellant. Out of the above amount, Rs.250.62 Lakhs were remitted against provident fund dues and Rs.131.36 Lakhs were utilised for clearing 50% salary of the employees who opted VRS. In spite of the financial difficulties, the appellant remitted Rs.2,83,74,318.90 by way of 16 cheques. The respondent adjusted the amount towards penal damages and interest against the instructions of the appellant. This further increased the liability of damages and interest. Thereafter the appellant sent a letter dt.14.10.2009 showing the details of contribution paid from 2001-02 to 2008-09. The said letter is produced and marked as Annexure 3. From the above letter it is clear that out of the amount remitted by the appellant an amount of Rs.2.07 Crores was adjusted and an amount of Rs.76,56,514/- was still pending adjustment. According to the respondent they adjusted an amount of Rs.2,47,03,189.40, still there is a balance of Rs.36,71,129.50 pending adjustment lying with the respondent. In spite of specific request for a statement of adjustment made by the respondent, no such information is given by the respondent so far. According to the appellant an amount of Rs.1,76,20,136.70 is still pending to be adjusted by the respondent. It is admitted that there was delay in remittance of contribution for the period from 04/2000 onwards. As already pointed out the delay in remittance was not deliberate or wilful. All the employees left the appellant establishment on VRS in 2006. Due to want of funds the employees

were given only 50% of salary but the respondent computed contribution on full wages and realised the contribution from the appellant. Since there was delay, the respondent realised both the contributions from the appellant society. While so the respondent issued summons dt.12.03.2014 directing the appellant to show cause why damages U/s 14B of the Act should not be recover. The appellant appeared and filed written objections stating the reason for the delayed payment of contribution. Without considering any of the representation the respondent issued the impugned order. The respondent ought to have considered the mitigating circumstances while issuing the impugned order. In **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 the Division Bench of the Hon'ble High Court of Kerala held that while assessing damages U/s 14B, the respondent shall consider the mitigating circumstances leading to the delay in remittance of provident fund contribution. As already submitted the ban of manufacture of arrack during the year 1996 led to the closure of the appellant establishment which is beyond the control of the appellant. From 10/2002 onwards the salary of the employees were paid at 50% and in the year 2005-06 all the employees were relieved under VRS scheme. The appellant society is declared a 'sick unit' vide letter dt.24.07.2013 and the proposal has been sent for appointment of Official Liquidator to wind up the appellant society. A copy of the letter is produced and marked as Annexure 6.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. As per Para 38 of EPF Scheme the appellant is liable to pay the monthly provident fund contribution within 15 days of close of every month. The appellant failed to remit the contribution in time for the period from 08/2004 to 01/2014. The appellant therefore violated the provisions contained in Para 30 and 38 of EPF Scheme 1952. Hence a notice was issued to the appellant along with a delay statement. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing and filed a written statement. He did not dispute the delay statement sent along with the notice. The appellant raised the issue of financial difficulties for delayed remittance of contribution. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC, 1982 KLT 303** the Hon'ble High Court Kerala observed that the employer is bound to pay contributions under the Act every month irrespective of the fact that wages have been paid or not. Granting of concession to the appellant on their refusal to pay wages to the employees, which is a fundamental right guaranteed in the Article 21 of the Constitution of India, is not valid in law. Annexure A1 is an order of the Govt of Kerala having approved a social safety net programme for the employees. It deals with retirement compensation, settlement of arrears of salary etc. Annexure A2 is the order of Govt of Kerala regarding

administrative sanction for drawing certain amount. Both these Annexures have nothing to do with this case. All the remittance made by the appellant has been adjusted and accounted properly. The amount recovered from the Bank is as per the provisions of the Act. The appellant cannot take shelter under the pleading that only 50% of the salary was paid and the salary was also delayed. The decision of the Hon'ble High Court of Kerala in **Harrisons Malayalam** case (Supra) is not relevant to the present case as the above order was issued on an entirely different sets of facts. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sriram Mutual Fund**, Civil appeal no.9523-9524/2003 held that mensrea is not applicable to disputes under a civil Act. Breach of civil obligation attracts penalty irrespective of the fact whether the contravention was made by the defaulter with guilty intention or not.

4. The learned Counsel for the respondent pointed out that no appeal is provided under the Act against an order issued U/s 7Q of the Act. On a perusal of Sec 7(I), it is seen that no appeal is provided U/s 7(I) from an order issued U/s 7Q of the Act. In **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 the Hon'ble Supreme Court held that the legislative intention is very clear that no appeal can be filed from an order issued U/s 7Q of the Act. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that no appeal can be maintain against an order issued U/s 7Q of the Act.

5. The learned Counsel for the appellant relied on the financial stringency of the appellant establishment to plead that the damages U/s 14B of the Act shall be waived or atleast reduced to the minimum. He has produced various documents starting from Annexure A1, A2 and also the additional documents of audit certificate of the appellant establishment for the year 2003-04 to 2007-08. These documents clearly establish that the appellant establishment is critically sick during the relevant period due to financial difficulties. The appellant establishment was manufacturing arrack and since the banning of production of arrack by the Govt of Kerala in 1996, the finance of the appellant establishment started to deteriorate. It was also pointed out that the appellant paid only 50% of the salary as directed by the Govt whereas the provident fund contribution is calculated on the total wages. It is also argued that all the employees except one of the appellant establishment were relieved on VRS in the year 2005-06 and the appellant society is under liquidation. Taking into account the financial constrains of the appeal establishment clearly established through the documentary evidence the appellant is definitely is entitled for some relief as far as damages concerned.

6. The learned Counsel for the appellant very strongly argued that the appellant remitted an amount of Rs.2,83,74,378.90 and the respondent accounted only Rs.2,47,03,189.40 in their statements. There is still an amount

of Rs.36,71,129.50 lying with the respondent to be adjusted. According to the appellant there is an amount of Rs.76.56 lakhs lying with the respondent to be adjusted against future liabilities. Hence the learned Counsel was directed to file an adjustment statement of receipt and the way the amounts are adjusted by the respondent during the relevant point of time. However the respondent filed a statement indicating that the appellant is liable to pay a further amount of Rs.1.84 Crores assessed dues and Rs.2.3 Crores towards 7Q for the period from 04/2002 to 07/2004 amounting to a total outstanding dues of Rs.4.5 Crores. This will not clarify the position alleged by the learned Counsel for the appellant in any way. The respondent shall account all the receipts from the appellant including the recovery made U/s 8B to 8G of the Act and indicate as to how the adjustments are made by the respondent. A statement to this effect shall be sent to the appellant within a period of one month from the receipt of this order and the appellant shall verify the statement and confirm the correctness of the same. In the event of any dispute the same shall be resolved by the respondent within a further period of one month.

7. Considering all the 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 50% of the damages assessed as per the impugned order. On finalisation of the exercise of adjusting the recoveries made by the respondent,

if there is any amount outstanding with the respondent, the damages so quantified shall be adjusted against the outstanding dues. If no amount is outstanding the appellant is at liberty to recover the same as per law.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified and the appellant is directed to remit 50% of the damages. The appeal against 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer