



सत्यमेव जयते

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

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

(Monday the 16th day of November, 2020)

**APPEAL Nos.374/2018, 94/2019, 311/2019,
312/2019, 319/2019 & 671/2019**
(Old Nos.353(7)2014, 864(7)2014, 994(7)2015,
993(7)2015, 89(7)2015 & 91(7)2013)

Appellant : M/s.Kerala State Rubber Co-operative Ltd
4th Floor, KVR Tower
South Bazar
Kannur - 670002

By Adv.K. K. Premalal

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kannur - 670 301

By Adv.K. C. Santhosh Kumar

This case coming up for final hearing on 23.10.2020 and this Tribunal-cum-Labour Court on 16.11.2020 passed the following:

ORDER

Appeal no.374/2018 is filed against order no.KR/KNR/17318/ENF 1(3)/DAMAGES/2014/1516 dt.27.01.2014 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 04/2011 to 03/2013. The interest U/s 7Q

of the Act is also being challenged in this appeal. The total damages assessed is Rs. 44,084/-.

2. Appeal no.94/2019 is filed by M/s.Rubco Compound Mixing Plant against order no.KR/KNR/18390/ENF-1(1)/DAMAGES/2014-15/984 dt.26.06.2014 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 03/2009 to 02/2012. The total damages assessed is Rs.9,79,522/-. Interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

3. Appeal no.311/2019 is filed also filed by M/s.Rubco Compound Mixing Plant against order no.KR/KNR/18390/ENF-1(1)/DAMAGES/2015-16/1830 dt.27.07.2015 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 01/2012 to 08/2014. The total damages assessed is Rs.16,06,342/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

4. Appeal no.312/2019 is filed by M/s.Rubco Hawaii Chappal Factory against the order no.KR/KNR/18015/ENF-1(1)/DAMAGES/2015-16/1915 dt. 30.07.2015 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 01/2012 to 07/2014. The total damages assessed is Rs.6,71,069/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

5. Appeal no.319/2019 is also filed by M/s. Rubco Hawaii Chappal Factory against order no.KR/KNR/18015/ENF-1(1)/DAMAGES/2014-15/2933 dt.17.11.2014 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 03/2012 to 02/2013. The total damages Rs.2,09,652/- were assessed only in respect of employees' share of contribution paid belatedly by the appellant. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

6. Appeal no.671/2019 is being filed by M/s. Rubco Huat Woods Pvt Ltd against order no. KR/KNR/18103/ENF1(5)/DAMAGES/2011/6389 dt.27.12.2012 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 03/2008 to 02/2010. The total damages assessed is Rs.22,22,931/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

7. The appellants are different units of Kerala State Rubber Co-operative Ltd, Kannur wherein the appellant is having 51% share holding. Since common issues are raised in all these appeals, all the appeals are heard and disposed of by a common order.

8. The appellant is a co-operative society registered under the Co-operative Society Act, 1969. The society was formed for the purpose of arresting the steep fall of price of natural rubber, by setting rubber based industrial units based on rubber and rubber wood products. Due to various

reasons all these companies were running under heavy loss. The company is in acute financial difficulties. During the relevant period even the salary of the employees were paid after availing loan from various financial agencies. Hence the appellant could not pay the provident fund in time. The respondent issued notices to various units to show cause why damages envisaged U/s 14B of the Act shall not be recovered from the appellant. The representatives of the appellant appeared before the respondent and pointed out the financial difficulties. The appellant also filed a detailed statement showing the financial difficulties of the appellant establishment. The respondent issued the impugned orders without considering any of the pleadings. Rubco group of companies and its factories are 'sick' units. The group approached various financial agencies and Governmental organizations for financial assistance. The appellant will be in a position to remit the provident fund contribution in time in future. The order of the respondent is a mechanical one without applying mind and without taking into consideration the facts and circumstances of the matter. The respondent failed to consider the dictum laid down by the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790. The respondent ought to have seen that the delay in payment of contribution was neither wilful nor wanton. The respondent ought to have considered the financial difficulties of the appellant before issuing the impugned order.

9. The respondent filed counter denying the allegations in the appeal memorandum. Kerala State Rubber Co-operative Ltd and all the units coming under the group were covered and allotted separate code number for administrative convenience. The appellants delayed remittance of contribution during various spells. Hence the respondent issued notices to the appellants along with a detailed statement of delay to show cause why damages shall not be imposed on the appellant establishments. The appellants were represented in the enquiry and they also filed a submission from the Managing Director of the group stating that the appellant group was in acute financial crisis and hence there was delay in remittance of provident fund contribution. None of the appellants is herein disputing the correctness of the delay statement sent across to them. The only defence taken by the appellants was that of financial difficulties. The appellants defaulted in remittance of provident fund dues and when there is delay in remittance of contribution, damages U/s 14B read with Para 32 of EPF Scheme is attracted. The claim of the appellants that there was violation of natural justice was denied by the respondent and stated that the notices were issued to the appellants along with a delay statement and the appellants were also given an opportunity to represent their case before the impugned orders were issued. As already pointed out the only ground taken by the appellants was that of financial difficulties. In **Hindustan Times Ltd Vs**

UOI, 1998 1 Supreme 174, the Hon'ble Supreme Court of India held that default on the part of employer based on plea of financial problem relating to other indebtedness or the delay in realization of amount cannot be justifiable grounds for the employer to escape the liability. In **S. H. Salve Kadam Co Vs RPFC**, 1981 LAB IC 568 (Karnat) the Hon'ble High Court of Karnataka held that " The Act is a social welfare legislation and its object is to promote the welfare of the employees. It requires the employer and the employee to pay contribution to the Fund of the employee at the prescribed rate. When it is obligatory for the employer to ensure payment of contribution to the fund of employees, the question of intention does not arise. If intention would be necessary element, the object of the Scheme would be frustrated ". The Hon'ble Supreme Court in **Organo Chemicals Vs UOI**, 1979 2 LLJ 416 observed that " Even if it is assumed that there was a loss as claimed it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to link with the financial position of the establishment over different point of time ".

10. It is seen from the impugned order that appellant is a chronic defaulter and all these proceedings will substantiate the fact that the appellants delayed the provident fund contribution over a substantial period of time. The main claim of the appellants in these appeals for reduction or

waiver of damages is that of financial difficulties. The appellants produced the audit certificates and audit memorandum given by Kerala State Co-operative Department for the years 2011-12 and 2012-13 to substantiate their claim of financial difficulties. From these documents, it can be seen that the group was running under financial loss during 2011-12 and 2012-13. It is also seen that the group has got 10 different units and there is huge financial transaction between these units. It is true that the appellant as a group was under financial loss but it is not possible to evaluate the actual financial position of the appellant from the documents produced by them. In **Aluminium Corporation Vs Their workman**, 1963 2 LLJ 629 (Supreme) the Hon'ble Supreme Court held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The Hon'ble Supreme Court in more than one case has held that the correctness of figures as shown in the balance sheet have to be established by proper evidence in Court by those responsible for preparing the balance sheet or by other competent witness. In these appeals the documents produced by the appellants are more complicated in view of the fact that it is a consolidated balance sheet for many units with lot of transactions in between the units. Hence it is not possible to assess the actual financial situation of the appellant companies and it is not possible to conclude that the financial constraints were the reason for delayed payment

of contribution for the period from 2009 onwards. The learned Counsel for the respondent pointed out that there was an admission on the side of the appellants that salaries of the employees were paid in time though after mobilizing funds from outer sources. When salary of the employees are paid, 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 a criminal offence U/s 405/406 IPC. The employees' share of contribution amounts to 50% of the total contribution which is remitted belatedly by the appellants. Having committed an offence of breach of trust the appellants cannot plead that there was no mensrea or intentional delay in remittance of employees' share of provident fund contribution. The Division Bench of Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 3 KLT 790 held that financial difficulties ought to be considered while imposing damages. The facts of that case is not similar to the present cases. In **Harrison's Malayalam** case one of the main reason for delay was because of the stay granted by the Hon'ble High Court. There was also a plea of financial difficulties as plantation industry was going through a very difficult times at that point of time. The learned Counsel for the respondent argued that if financial difficulties by itself is taken as a ground for reducing damages, the very existence of the social security Scheme will be in danger. As pointed

out by the Hon'ble Supreme Court in **Organo Chemicals** case (Supra) the existence of the social security Scheme depends on timely receipt of the employer and employee contribution, timely deposit of the same by Employees Provident Fund Organisation and crediting interest in members account in time. If the investment of the fund is delayed, the yield out of the investment will go down which will affect the interest to be paid to the employees. The interest levied U/s 7Q of the Act in many instances will not compensate the actual interest paid to the employees because the interest U/s 7Q is collected on yearly balance whereas the interest paid to the employees is on cumulative balance.

11. The documents produced by the appellant would show that the group as a whole was suffering huge financial loss for quite a long time. Though they failed to substantiate the financial loss from 2009 onwards, the cumulative loss during 2011-12 and 2012-13 are substantially high. As already pointed out the appellants are not entitled for any relief for delay in remittance of employees' share of contribution which is already deducted from the salary of the employees and which is utilized by the appellants for day to day running of the appellant establishments. The employees' share of contribution accounts for 50% of the total contribution and therefore the appellants are not entitled for any relief for belated remittance of the same. However taking into account the heavy financial losses reported and

reflected in the audit report of 2011-12 and 2012-13, it is felt that the appellants are entitled for some relief with regard to damages in the employer's share of contribution.

12. Considering all the facts, pleadings and evidence discussed above, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages as per the impugned orders.

13. The appellants in all these appeals also challenged the order issued U/s 7Q of the Act demanding interest for belated remittance of contribution. The learned Counsel for the respondent pointed out that there is no provision to prefer any appeal from an order issued U/s 7Q of the Act. On perusal of Sec 7(I), it is seen that there is no provision to appeal from an order issued U/s 7Q of the Act. The Hon'ble Supreme Court in **Arcot Textile Mills Vs RPFC**, 2014 AIR(SC) 295 held that no appeal is maintainable against an order issued U/s 7Q. The Division Bench of Hon'ble High Court of Kerala in **Harrisons Malayalam Ltd** case (Supra) has also approved the above view. Hence the appeals against Sec 7Q orders are not maintainable.

The appeals against Sec 7Q orders are dismissed as not maintainable.
The appeals against 14B orders are partially allowed, the impugned orders are modified and the appellant is directed to remit 70% of the damages assessed as per the impugned orders.

Sd/-
(V. Vijaya Kumar)
Presiding Officer