



सत्यमेव जयते

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

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

(Friday the 16<sup>th</sup> day of October, 2020)

**APPEAL No.430/2018**

(Old No.431(7)2011)

Appellant : M/s.Plantation Corporation of Kerala Ltd  
Vettilappara Estate  
Kalady Plantation P.O.  
Ernakulam - 683583

By M/s.Joseph & Kurian

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kochi - 682017

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 13.03.2020 and this Tribunal-cum-Labour Court on 16.10.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/2633/PD/B/T(2)/2011/1306 dt.06.05.2011 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 07/2001 to 10/2001. The total damages assessed is Rs. 6,45,676/-.

2. The appellant is a company registered under the Companies Act and owned by Govt of Kerala. The appellant is engaged in the business of planting rubber, cashew and other plantation crops in various estates in the State of Kerala. Vettilappara Estate is one of such estate coming within the jurisdiction of the respondent. The crisis in plantation industry forced the appellant to pay even the wages of the employees belatedly. There was a situation when the appellant was threatened with closure because of financial crisis. The appellant entered into negotiation with unions in the estates to forgo their wages in order to obviate a financial disaster. Pursuant to the discussions, the unions agreed to forgo their salary for the period from July to October 2001 and therefore no wages were paid to any of the employees for the months July to October 2001. Hence no provident fund contribution was paid in respect of those periods. Thereafter when the financial position of the company improved, it was decided to pay the salary and the same was paid on 08.01.2005. The appellant also remitted the provident fund contribution for those months on 17.01.2005. The respondent issued notice alleging delay in remittance of provident fund contribution. The appellant explained the reasons for delay. Without considering the submissions the respondent issued the impugned order. It is settled law that provident fund contribution is payable only in respect of wages paid or payable for a particular wage period. Since no wages were

paid during the relevant period, no damages U/s 14B can be levied. Sub Para 3 of Para 29 of EPF Scheme makes it express clear that the contributions shall be calculated on wages actually drawn during the wage period. Further Para 32 of the Scheme mandates that the member's contribution paid by the employer shall be recovered only by means of deduction from the wages of the member and not otherwise. Further Para 38 of the Scheme which prescribes the mode of payment of contribution makes it clear that the employer shall before paying the employees' wages for any period deduct the employees contribution from his wages which together with his own contribution and administrative charges be paid within 15 days of close of the month. These provisions in the Scheme makes it abundantly clear that the contributions are payable only in respect of wages which have actually been paid. In view of the above provision, the respondent erred in holding that the appellant is liable to pay damages U/s 14B of the Act. The respondent ought to have exercised his discretion while levying damages U/s 14B of the Act.

3. The respondent filed counter denying the allegations in the appeal memorandum. The appellant company defaulted in payment of statutory dues for the period from 07/2001 to 10/2001 in respect of Vettilappara Estate which is covered under the provisions of the Act. Belated remittance of contribution will attract damages U/s 14B of the Act read with Para 32A

of EPF Scheme. The respondent issued notice dt.12.11.2010 directing the appellant to appear before the respondent and show cause why damages U/s 14B of the Act shall not be levied for belated remittance of contribution. The representative of the appellant who appeared before the respondent stated that the actual wages for those months were paid belatedly as arrears in accordance with the agreement made with the union. Though the appellant submitted that they will be filing a detailed submission, the same was not filed by the appellant. After considering the contentions raised by the appellant, the respondent came to the conclusion that the financial difficulties pointed out by the appellant is a common risk associated with any business and therefore the loss suffered for a short period cannot be taken as a valid reason for waiver or reduction of penal damages. The contention of the appellant that they are not liable to pay penal damages for belated remittance of contribution is inconsistent with the statutory provisions and hence it cannot be accepted. As per Para 30(1) of EPF Scheme, the employer shall in the first instance pay both contribution payable by himself towards employer's share of contribution and also employees' share of contribution on behalf of the member employed by him directly or by or through a contractor. The appellant cannot ignore the statutory liability cast upon him as an employer. When a particular provision of a statute is to be interpreted, it has to be reconciled with the

entire scheme of the Act and therefore the contention of the appellant that they are not liable to pay damages for belated remittance of contribution is totally inconsistent with the provisions U/s 14B of the Act. As per the statutory returns and challans filed by the appellant, the remittance were made against wages paid in 07/2001 to 10/2001. According to the appellant, it is on the basis of some agreement between the appellant and trade unions which is not binding on the respondent. Because the provident fund dues are accounted against 07/2001 to 10/2001, the respondent is under a statutory obligation to credit provident fund contribution and interest thereon at statutory rates to the individual provident fund accounts of the members from the due date itself. This will cause huge financial loss to the respondent organization which can only be indemnified by levying penal damages and interest U/s 7Q. The interest is to be credited to the members account on accumulative basis. The provident fund dues are a statutory liability on the appellant and is not depended on the financial condition of the appellant. Delay in remittance also means lesser funds for investment by the employees provident fund organization resulting in recurring loss in returns which will ultimately affect the benefits payable to the provident fund members and their families. According to the Hon'ble Supreme Court in **M/s.Organo Chemical Industries Vs UOI**, 1979 (2) LLJ 416 SC the expression 'damages' occurring in Sec 14B of the Act is in

substance penalty imposed on the employer for breach of statutory obligation. The Hon'ble Supreme Court of India and various High Courts reiterated that delay in remittance of statutory provident fund dues for any reason resulting in default as enjoined under the Act and penal damages provided U/s 14B of the Act is absolutely inevitable. Once the default is established beyond any doubt, considering the negative impact the delay in remittance will necessarily have on the various benevolent Schemes under the Act. The Hon'ble Supreme Court in **Hindustan Times Ltd Vs UOI**, AIR 1998 SC 682 rejected the plea of financial difficulties for waiving penal damages. In **Sky Machinery Ltd Vs RPFC**, 1998 LLR 9825 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waiving damages for delay in depositing provident fund contribution. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, (1981) 1 LLJ 440 the Hon'ble High Court of Kerala held that the delay in remittance for whatever reason shall be visited with damages U/s 14B of the Act.

4. There is no dispute regarding the facts of the case. Due to financial difficulties faced by the appellant company the trade unions agreed to defer the wages from July to October 2001. The salary for those months were paid in the year 2005 on 08.01.2005. The appellant remitted the contribution against the arrears of wages on 17.01.2005. Though the wages and contribution were paid in the month of January 2005 in the

returns filed by the establishment, it was accounted against the dues for the month of July to October 2001. This necessarily makes it incumbent on the respondent to credit interest on a cumulative basis from 07/2001. According to the learned Counsel for the respondent the only way to compensate the loss was to levy damages and claim interest U/s 7Q from the appellant.

5. An interesting legal question was also raised by the learned Counsel for the appellant that the provident fund dues are required to be paid only when the wages are actually paid to the employees and not from the due date of payment. This was strongly contested by the learned Counsel for the respondent. According to him, Para 30(1) makes it abundantly clear that the employer shall pay both the contribution on due basis and not when the salary is actually paid. Para 30 of the EPF Scheme reads as follows;

“ 30. Payment of contribution

1. The employer shall in the first instance pay both the contribution payable by himself (in the Scheme referred to as the employer's contribution) and also on behalf of the member employed by him or by or thru a contractor, the contribution payable by such member (in the Scheme referred to as the member's contribution) “

In **Employees Provident Fund Organisation Vs Birlapur Vidyalaya and others**, (2007) 2 LLM 476 (Cal.HC) the Hon'ble High Court of Calcutta examined the whole Scheme and concluded that;

“ This maintenance of accounts is not dependent on the whims and caprice of the employers for choosing the time of payment or making payment at a later date. The question arose in **Organo Chemical Industries Vs Union of India**, 1979 (2) LAB IC 1261. In the said decision it was held;

“ The whole project gets stultified if employer thwart contributory responsibility and this wider fall-out must colour the concept of damages when the court seeks to define its content in the special settings of the Act ”.

“ Para 3. To allow the employer to make the contribution only when he pays the wages would be to stultify the project. To accept the petitioner's contention in this case would be to enable the employer to divert remittance to the fund to suit his convenience putting forward some time reasonable grounds, sometimes justifiable grounds and most often unjustifiable grounds. The authority under the Act has discretion to mitigate damages depending upon the circumstances of the case but never a discretion to condone delay”.



The Hon'ble High Court concluded that any delay in remittance of provident fund contribution consequent on the delay in payment of wages will attract damages U/s 14B of the Act. The learned Counsel for the appellant relied on Para 29 (3) of EPF Scheme 1952 to argue that the contribution shall be calculated only on wages actually drawn during the whole month. The Hon'ble High Court of Andhra Pradesh in **RPFC Vs EPF Appellate Tribunal**, 2012 LIC 1293 (AP.HC) examined the words 'actually drawn' occurring in Para 29(3). According to the Hon'ble High Court the words 'actually drawn' occurring in Para 29(3) must be understood as actually due, payable and drawn if the disbursement has physically taken place. If not, they must be understood as liable to be drawn and payable. The obligation to make contribution is governed by the provisions of the statute irrespective of whether the payment wages is made or not to the employee. Paras 29(3) and 38 of EPF Scheme, 1952 contemplates a situation when wages are paid on a regular basis. These provisions cannot be invoked to argue that contribution need to be paid only after the wages are paid even when there is delay in payment of wages. The appellant could have saved the situation by accounting the remittance in 01/2005 when the wages were actually paid. Since the remittance were accounted against period 07/2001 to 10/2001, the respondent is liable to pay compound interest on cumulative monthly balance to the employees, a huge liability

which cannot be covered by simple interest U/s 7(O) of the Act. From the above discussion it is clear that the appellant is liable to make the provident fund contribution, both employer as well as employees irrespective of the fact whether wages were paid or not.

6. The learned Counsel for the appellant relied on the decision of Hon'ble Supreme Court in **McLeod Russell India Ltd Vs RPFC**, (2014) 15 SCC 263 and **Hindustan Steel Ltd Vs State of Orissa**, AIR 1970 SCC 253 and the decision of Kerala High Court in **BPL Ltd Vs EPF Appellate Tribunal**, laws (Ker) 2014 (7) 336 to argue that the respondent has the discretion to reduce or waive damages depending on the facts of each case and the element of mensrea also is a relevant factor while deciding the quantum of damages. The appellant failed to produce any documentary proof to support their claim of financial difficulties. They also failed to produce a copy of the agreement alleged to have been entered with the trade unions to defer the payment of wages to them. Hence it is not possible to arrive at a final conclusion regarding the reasons for deffering payment of wages to its employees. The learned Counsel for the respondent did not seriously dispute the fact that the plantation industry was facing serious financial difficulties during the relevant point of time.

7. Considering the fact that the appellant is a Govt of Kerala undertaking also considering the fact that the plantation industry was facing

serious financial difficulties during 2000-2001 period, it is not possible to allege that the delay in remittance of provident fund contribution was intentional. However as rightly pointed out by the learned Counsel for the respondent, EPFO has a responsibility to pay cumulative interest to its members since the contribution is accounted for the period from July to October 2001 and the actual payment is received only on 17.01.2005.

8. Considering all the facts, pleadings and arguments in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed as per Sec 14B of the Act.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer