



सत्यमेव जयते

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

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

(Friday the 15th day of January, 2021)

APPEAL No.447/2019
(Old No.483(7)2016)

Appellant : M/s.Al-Ameen Public School
Chandiroor P.O.
Alappuzha - 688547

By Adv.A. A. Mohammed Nazir

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloor
Kochi – 682017

This case coming up for final hearing on 28.12.2020 and this Tribunal-cum-Labour Court on 15.01.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/19764/DAMAGES CELL/PJT/2015/13962 dt.09.12.2015 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the belated remittance of contribution for the period from 06/2003 to 04/2007. The total damages assessed is Rs.3,66,984/-.

2. The appellant is an educational institution covered under the provisions of the Act. The appellant had to face several problems in the initial stages of starting the school. Apart from the backwardness of the area, the appellant had severe financial difficulties also. There was delay in remittance of contribution. There was some dispute regarding the enrollment of certain employees under the Act. The dispute was resolved in a proceedings U/s 7A of the Act and the appellant remitted the contribution immediately thereafter. Though the appellant attended the enquiry U/s 14B and submitted the above facts to the authority, the impugned orders were issued without looking into the same. The Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 held that the financial difficulties also should be looked into before quantifying the damages.

3. The respondent filed counter denying the above allegations. The appellant admitted during the course of hearing before the authority that there was delay in remittance of contribution for the period 06/2003 to 04/2007. When there is delay in remittance of contribution, damages U/s 14B of the Act read with Para 32A of EPF Scheme is attracted. Accordingly the respondent issued notice dt.19.05.2014 to the respondent to show cause with documentary evidence, as to why penal damages shall not be levied for belated remittance of contribution. The appellant was also given a detailed delay statement and was

afforded an opportunity for personal hearing on 16.06.2014. The appellant was represented in the enquiry. During the course of enquiry the respondent noticed that the damages and interest have already been assessed and recovered for all the periods involved except 10/2005 and 02/2007. Accordingly the assessment of damages was confined to 10/2005 and 02/2007. Remittance of contribution is a statutory obligation under Paras 30 and 38 of the EPF Scheme and the appellant is liable to remit the contribution within 15 days of close of every month. Any delay in remittance of contribution will attract damages U/s 14B. In **Organo Chemical Industries Vs UOI**, 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the reason for the introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contribution to the funds. If the stream of contribution were frozen by employer's default, the social security scheme would be damnified by traumatic starvation of funds. The decision of Hon'ble High Court of Kerala in **Harrison's Malayalam Ltd** (Supra) was on entirely different context and is not relevant in the facts and circumstances of this case. It is a settled legal position that mensrea is not an essential ingredient for contravention of the provisions of a civil Act and penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intention of the parties committing such violation becomes immaterial.

4. The only ground pleaded by the appellant is that of financial difficulties. It is seen that the appellant failed to produce any evidence before the 14B authority to substantiate their claim of financial difficulties. The case of the appellant is that there were no adequate opportunity to establish the financial difficulties. However it is seen that the appellant was given adequate opportunity before the impugned order is issued. The appellant failed to produce any documents to substantiate their claim of financial difficulties, even in this appeal. In **M/s.KEE Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that when the appellants claim financial difficulties for relief U/s 14B, they shall produce records to substantiate the same. As already stated the appellant failed to produce any records to substantiate their claim of financial difficulties in this appeal.

5. It was pointed out that there was a dispute regarding enrollment of certain employees. The dispute was resolved U/s 7A of the Act. The appellant remitted the contribution immediately after the assessment orders were issued by the respondent. According to the appellant no mensrea can be alleged in the circumstances of this case. According to the learned Counsel for the respondent, non-enrollment of eligible employees is an offence under the provisions of the Act and the appellant cannot claim that there was no mensrea in the delayed remittance of contribution. However considering the fact that

the appellant is a school and there was a dispute pending regarding the enrollment of certain eligible employees which delayed the remittance of contribution, the appellant is entitled for some relief as far as damages are concerned.

6. Considering the facts, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the assessed damages U/s 14B of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 80% of the damages assessed U/s 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer