



सत्यमेव जयते

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

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

(Tuesday the 17<sup>th</sup> day of March, 2020)

**APPEAL No.53/2018  
(Old No.A/KL-34/2016)**

Appellant : M/s.Kerala Electricals & Allied  
Engineering Co. Ltd  
Mamala P.O.  
Kochi - 682305

By M/s.Menon & Pai

Respondent : The Assistant PFCommissioner  
EPFO, Sub Regional Office  
Kochi - 682017

By Adv.S. Prasanth

This case coming up for final hearing on 04.02.2020 and this Tribunal-cum-Labour Court on 17.03.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KCH/2700/DAMAGES CELL/2016/482 dt.08.06.2016 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter mentioned as 'the Act') for belated remittance of provident fund contribution for the period from 12/1998 to 09/2009 and 02/2009 to 11/2013. The total damages assessed is Rs.59,65,079/-.

2. The appellant is a Govt of Kerala undertaking engaged in the manufacture and distribution of transformers. The establishment is covered under the provisions of the Act. The appellant was regular in compliance. However due to stiff competition in the market from private sector, the appellant company was facing financial constraints since last 20 years. However to the extent possible, the appellant was paying contribution in time. There was lot of delay in getting the bills cleared from Kerala, Tamil Nadu and Karnataka Electricity Boards. Because of this delay, even salary of the employees were delayed and consequently there was delay in payment of provident fund contribution. The true copies of the Profit & Loss account for the period from 1998-99 to 2012-13 are produced as Annexure A1-A15. The appellant received notice alleging delay in remittance of contribution for the period from 12/1998 to 09/2009 and 02/2009 to 11/2013. The appellant was represented in the 14B proceedings and explained that the delay in remittance of contribution was due to acute financial crisis and there was no willful delay or mensrea in the delayed remittance of contribution. It was also pointed out to the respondent that the appellant could not verify the payment details prior to 2006-07 as the related documents were not available with the appellant. The appellant also submitted before the respondent that since there was a delay of more than 10 years in initiating action, the burden to establish the discharge of

liabilities could not be cast on the appellant and there shall not be any prejudice against the appellant. Without considering the submission made by the appellant, the respondent issued the impugned order assessing damages for the belated remittance of contribution. In spite of the fact that appellant substantiated their claim of financial difficulties before the 14B authority, the respondent failed to exercise its discretion to reduce or waive the damages as proposed in the notice. In **RPFC Vs S.D. College, Hoshiarpur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of damages. In **RPFC Vs Harrison's Malayalam Ltd**, 2013 (3) KLT 790 the Division Bench of the Hon'ble High Court of Kerala held that financial difficulties can be considered as a ground for reducing the damages and if the delay in remitting contribution was not deliberate or intentional but for the reasons beyond control of the appellant.

3. The respondent filed counter denying the above allegations. Employees Provident Fund & Miscellaneous Provisions Act, 1952 provides for social security to employees working in any establishment engaging 20 or more persons. It provides for compulsory deduction of provident fund from the employees and equal contribution from the employer which is required to be deposited in the employees account. The Act also provides

for Insurance and Pensionary benefits to the employees. PF contribution have to be deposited by the employer by the 15<sup>th</sup> of next month in which the employee has worked in the establishment and the dues become payable to him. The appellant establishment is covered under the provisions of the Act from 09.12.1967. The appellant establishment delayed remittance of contribution from 12/1998 to 09/2009 and from 2/2009 to 11/2013. Belated remittance of contribution attracts damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant along with a detailed delay statement showing the contribution, the due date of contribution, the actual date of remittance, the delay in remittance and the proposed damages. Representatives of the appellant attended the hearing on various dates. From the records placed before the respondent, it is seen that damages were assessed for belated remittance of contribution for the period from 04/1999 to 11/1999 and 01/2000 to 03/2001. Hence the above period was excluded from the present assessment. The representative of the appellant admitted the delay in remittance of contribution. The appellant cannot ignore the statutory liability cast upon him under Paras 30 & 38 of EPF Scheme to remit the monthly contribution payable under various accounts within 15 days of close of every month. The liability of the employer under the Act arises the moment the wages are earned by the members irrespective of whether the salary is actually paid

or not. Any delay in remittance of contribution beyond the stipulated date will amount to 'default' and will attract damages U/s 14B read with Para 32A of EPF Scheme. In **Hindustan Times Ltd Vs Union of India**, 1998 (2) SCC 242 the Hon'ble Supreme Court of India held that the plea of power cut, financial problems etc. are not justifiable ground for employer to escape from provident fund liability. In **Hindustan Times Ltd** (Supra) the Hon'ble Supreme Court of India held that " there is no period of limitation prescribed by the Legislature for initiating action for recovery of damages U/s 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled in to a belief that no proceedings U/s 14B would be taken; mere delay in initiating action U/s 14B cannot amount to prejudice in as much as the delay on the part of the department, would have only allowed the employer to use the money for his own purposes or for his business when there is no additional provisions for charging interest ". The Hon'ble Supreme Court also observed that the defaulter has obviously had the benefit of the "boon of delay" which is so dear to debtors. The decision of the Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd** (Supra) is not at all applicable to the present case. That decision was rendered in the peculiar circumstances of the case. There, the delay in remittance of contribution was caused due to stay granted by

the Hon'ble High Court in the implementation of the Employees' Pension Scheme, 1995 and other financial difficulties in the plantation industry. The establishment had been otherwise prompt in remittance of contribution. In this case, the appellant is a chronic defaulter and damages were assessed on various earlier occasions and remitted by the appellant. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 the Hon'ble Supreme Court held that the reason for introduction of Sec 14B was to deter and thwart employers from defaulting in forwarding contributions to the Funds, most often with the ulterior motive of misutilizing the money for their own business. The Hon'ble High Court also pointed that the pragmatics of the situation is that if the stream of contributions were frozen by the employer's defaults after, due deduction from the wages and diversion for their own purposes, the Scheme would be damnified by traumatic starvation of the fund. In **Chairman, SEBI Vs Sriram Mutual Fund**, (2006) 5 SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. The main grounds pleaded by the appellant for delayed remittance of contribution are 1) the financial constraints of the appellant establishment and 2) that there was no intentional delay in remittance of contribution. The appellant produced extracts of Profit & Loss account for

the period from 1998-99 to 2012-13 as Annexure A1-A15. It was pointed out by the learned Counsel for the respondent that these two page extracts will not in any way help to evaluate the actual financial position of the appellant company unless the complete balance sheets with schedules are produced and the contents of the same are properly explained. However from the Annexure A1 to A15, it is clear that the company was running under loss during the relevant point of time. Though the learned Counsel for the appellant argued that there was delay in payment of wages during the relevant point of time, he could not substantiate the same by producing any documentary proof. The learned Counsel for the respondent on the other hand argued that the wages in such public sector undertaking are being paid in time irrespective of the fact whether the company is running on profit or under loss. When the wages are paid, the employees' share of provident fund contribution, which amounts to 50% of the total contribution is being deducted from the salary of the employees. The appellant did not remit even this contribution thereby committing a criminal offence U/s 405/406 of IPC. Having committed an offence of breach of trust, the appellant cannot claim that there was no mensrea in delayed remittance of provident fund contribution. The Hon'ble Supreme Court in **Organo Chemical Industries** case (Supra) observed that in such cases the appellant cannot claim any relief from the respondent. The

Hon'ble Supreme Court in **McLeod Russell India Ltd Vs RPFC**, 2014 (4) SCC

263 observed that;

“ We may also know that this Court yet again reiterated the well known but often ignored principle that High Courts or any Appellate authority created by a statute should not substitute their perspective of discretion on that of the lower adjudicatory authority if the impugned order does not otherwise manifest perversity in the process of decision making.”

In this case, I did not find any perversity in the order issued by the authority U/s 14B. However the authority failed to consider the fact that the appellant company which is a State Govt undertaking was running under loss for more than 10 years. Though the records produced by the appellant will not substantiate their claim fully, it will definitely show that the appellant company was running under loss, deserving same relief in damages.



5. Considering the above facts and circumstance of this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer