



सत्यमेव जयते

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

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

(Monday the 4<sup>th</sup> day of January, 2021)

**APPEAL No.694/2019**

Appellant : M/s.Intimate Machines (P) Ltd  
Plot No.39, Monvila  
Industrial Estate, Kulathoor P.O.  
Trivandrum - 695583

By Adv.Ajith S. Nair

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Pattom  
Trivandrum - 695004

By Adv.Ajoy P.B.

This case coming up for final hearing on 01.12.2020 and this Tribunal-cum-Labour Court on 04.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/TVM/12758/PD/2019-20/1401 dft.10.07.2019 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 07/2016 to 04/2017. The total damages assessed is Rs.9,66,628/-.

2. The appellant is a company incorporated under the provisions of Companies Act, 1956 and is engaged in the business of manufacturing of machines used for printing industry. The appellant company was facing acute financial crisis due to various reasons. The appellant company faced financial setback due to economic recession and other reasons which have badly affected the financial stability of the company. The manufacturing and export of machines was not expanding as expected. A sister concern of the appellant M/s.Sola Offset Printers caught fire causing heavy financial liability. This is also one of the reason why there was difficulty in remitting the contribution in time. The salaries of the employees was also in arrears during the relevant period. The respondent issued notice alleging delay in remittance of provident fund contribution. The appellant replied to the notice and informed the respondent the circumstances which led to the delay in remittance of contribution. Without considering the submissions made by the appellant, the respondent issued the impugned order. The appellant is in default even now because of the financial crisis and when the regular contribution itself is not paid by the appellant, it is not fair on the part of the respondent to impose damages for belated remittance. There is no finding by the respondent authority that there is no wilful laches on the part of the appellant. It is submitted that the Hon'ble

High Court of Kerala and also the Hon'ble Supreme Court of India has repeatedly held that there shall be mensrea while levying damages.

3. The respondent filed counter denying the above allegations. The appellant establishment defaulted in payment of statutory contributions under the Act and belated payments attracted damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a summons was issued to the appellant to assess the damages for belated remittance of contribution for the period 07/2016 to 04/2017. A delay statement was also forwarded to him. The appellant was also given an opportunity for personal hearing. The notice was acknowledged by the appellant but failed to attend the hearing on 28.05.2019 and 02.07.2019. It was presumed that the appellant had no mitigating circumstances to plead and therefore the enquiry was concluded assessing the dues as per the notice dt.03.05.2019. In spite of the acknowledgement of the notices by the appellant, the appellant failed to attend the hearing or produce any proof in support of the reasons now claimed by the appellant. The appellant defaulted in payment of even the employees' share of contribution which they have deducted from the salary of the employees in each month. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sriram Mutual Fund**, Civil appeal no.9523-9524/2003 held that mensrea is not an essential ingredient for contravention of provisions of civil Act.

4. The only ground pleaded by the appellant in this appeal is that of financial difficulties. According to the learned Counsel for the respondent though the appellant was provided with adequate opportunity to plead their case and prove the same, they failed to attend the hearing and avail the opportunity. Even in this appeal the appellant failed to produce any document to substantiate their claim of financial difficulties. In **M/s.Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. As already pointed out, the appellant failed to substantiate his claim of financial difficulties before the authority U/s 14B as well as in this appeal. According to the appellant there was delay in payment of wages to its employees and consequently there was delay in remitting contribution to provident fund. The appellant failed to substantiate that contention also by producing the documentary evidence before the 14B authority as well as in this appeal. According to the learned Counsel for the respondent, the appellant had already deducted the employees' share of contribution when the salary is paid to the employees and they failed to remit the same with the respondent in time. Non remittance of employees' share of contribution deducted from the salary of the employees is an offence U/s 405/406 of IPC. Having committed an offence of breach of

trust the appellant cannot plead that there was no mensrea in delayed remittance of contribution. Had the appellant proved the financial difficulty and also proved the delay in payment of wages to its employees the appellant could claim some relief as far as damages is concerned. Having failed to do so, the appellant is not entitled for any relief claimed by him.

5. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer