



सत्यमेव जयते

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

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

(Monday the 26<sup>th</sup> day of October, 2020)

**APPEAL No.73/2019**

(Old no.500(7)2014)

Appellant : The Managing Director  
M/s.BPL India Ltd  
Koottupatha  
Coimbatore Main Road  
Palakkad - 678007

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner  
EPFO, Su Regional Office  
Eranhipalam P.O.  
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 19.10.2020 and this Tribunal-cum-Labour Court on 26.10.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KK/2260/ENF-4(4)/14B/2014/1074 dt.19.05.2014 assessing damages U/s 14B of EPF & MP Act,1952 (hereinafter

referred to as 'the Act') for belated remittance of contribution from 04/2012 to 01/2014. The total damages assessed is Rs.7,32,418/-.

2. The appellant is a public limited company registered under the Companies Act. Company is engaged in the manufacture of consumer electronic products like printed circuited boards, batteries and health care equipments. Since 2005 the appellant has been facing stiff competition from the manufacturers of China and Taiwan whose products are much cheaper. The appellant is finding it difficult to compete with those manufactures. Upto 2005 the company was remitting provident fund regularly. However w.e.f. December 2005 there was delay in payment of wages to the employees and consequently there was delay in contribution to the fund. The delay occurred on account of various factors beyond the control of the appellant. The appellant has been facing cash flow constraints for the last several years. The declined profitability and increase in finance caused the appellant not to make adequate investments in technological advancements and business operations. Because of the above, the appellant was forced to sell its battery operations and also health care business as a going concern. The accumulated loss till 31.03.2013 was more than Rs.88 Crores and the loss for the financial year ended 31.03.2013 was Rs.10.29 Crores. The true copy of the statement of profit and loss for the year ended 31.03.2013 is produced and marked as Annexure A1. The turnover of the appellant company was going down year after year. The appellant

company has entered in to a scheme of arrangement with its secured creditors with the approval of the Hon'ble High Court of Kerala. With mounting cash losses the salary and wages could not be paid on time. Because of the above reasons the provident fund payments were also delayed since April 2005. There was no deliberate or wilful delay in delayed remittance of provident fund contribution. The respondent issued notice alleging delay in remittance of provident fund contribution for the period from 04/2012 to 01/2014. The appellant appeared for the personal hearing on 29.04.2014 and explained the facts leading to the delayed remittance of contribution. The appellant also filed a detailed reply contenting that the delay in remittance of dues occurred for reasons beyond the control of the appellant. The copy of the reply dt.29.04.2014 is produced and marked as Annexure A3. Without considering any of the representations, the respondent issued the impugned order. The respondent failed to use his discretion provided U/s 14B and also Para 32A considering the mitigating circumstances of the case. In **RPFC Vs S.D. College, Hoshiarpur**, 1979 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. 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 will amount to a mitigating circumstances warranting reduced damages.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 17.11.1967. The appellant is required to pay the contributions as mandated under the provisions of the Act and Schemes thereunder. Since there was delay in remittance of contribution the appellant was summoned U/s 14B of the Act read with Para 32A of EPF Scheme. An authorised representative of the appellant attended the hearing and filed a written statement and also submitted that the delay in remittance of contribution was due to financial problems. In **Bharat Plywood and Timber Products Pvt Ltd Vs Employees' Provident Fund Commissioner**, 1977 (50) FJR 74 (Ker.HC) the Hon'ble High Court of Kerala held that when the employer makes default in payment of contribution he shall be liable to pay damages not exceeding the amount of arrears. Though there is sufficient reasons to make belated payments that is not a ground for granting exemption for paying penalty or damages. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 (1) LLJ 440 the Hon'ble High Court of Kerala held that even in case of lockout, strike etc., failure to make contribution resulting in default will have to be visited by damages U/s 14B of the Act. In **RPFC Vs S.D. College** (Supra) the Hon'ble Supreme Court was considering the pre-amended Sec 14B and the Hon'ble Supreme Court held that the Regional Provident Fund Commissioner has no power to waive penalty altogether. In **Organo Chemical Industries Vs UOI**, 1979 4

SCC 573 the Hon'ble Supreme Court held that " Even if it is assumed that there was 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 be linked with the financial position of the establishment over different points of time. If the employer neglects to remit or divert the monies for alien purposes the fund gets dry and the retirees are denied the meagre support when they most need it. The prospect of destitution demoralise the working class and frustrate the hope of community itself ". The appellant is a chronic defaulter and the respondent has initiated action for recovery of damages for the periods 05/2008 to 02/2009, 05/2010 to 03/2011 and 04/2011 to 03/2012 vide various proceedings. In **Associated Industries Pvt Ltd Vs RPFC**, 1963 (II) LLJ 652 the Hon'ble High Court of Kerala held that the employers are under legal obligation to deposit their shares of contribution to the fund within the time prescribed, the moment the Act and Schemes becomes applicable to them.

4. According to the learned Counsel for the appellant the financial position of the appellant company started declining from the year 2000 onwards due to the inversion of the products from countries like China and Taiwan. Due to financial difficulties even there was delay in payment of wages to its employees and consequently there was delay in remittance of provident fund contribution. The appellant failed to produce any documents to substantiate the claim that there

was delay in payment of wages to its employees. However the appellant produced a one page statement of profit and loss account of their parent company for the year 2011-12 and 2012-13. It has been repeatedly pointed out in various cases that production of such a document will not in any way help the appellant, as the one page profit and loss account of the company will not in any way prove the financial health of the appellant establishment. The Hon'ble Supreme Court in **Aluminium Corporation Vs their workman**, 1964 (4) SCR 429 held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The correctness of figures shown in the balance sheet itself have to be established by proper evidence in Court. Further the Annexure A1 profit and loss account of the parent company is showing a profit of Rs.29.24 Crores before exceptional and extraordinary items and tax. The loss of Rs.10.28 Crores reflected in Annexure A1, however is for the parent company as a whole and not for the appellant unit alone. The learned Counsel for the respondent denied the allegations of the appellant that the impugned order is silent about the pleading of the appellant that there was financial constraints during the relevant point of time. The learned Counsel for the appellant relied on various decisions of the Hon'ble Supreme Court and High Court to argue that the respondent failed to exercise its discretion granted U/s 14B and Para 32A of EPF Scheme before issuing the impugned order. In **RPFC Vs S.D. College, Hoshiarpur**, (Supra) the Hon'ble

Supreme Court held that though the commissioner has no power to waive the penalty altogether, he has the discretion to reduce the percentage of damages. In **Shanti Garments Vs RPFC**, the Hon'ble High Court citing the **S.D. College** case and held that where there is no wilful violation, the quantum of damages should be more or less compensatory in nature and where the default is continuous or intentional the damages payable in addition to being compensatory would be penal as well. In this particular case the learned Counsel for the respondent pointed out that the default is continuous and therefore the appellant is not entitled for any relief. In **RPFC Vs Harrisons Malayalam Ltd**, 2013 3 KLT 790 the Division Bench of the Hon'ble High Court of Kerala held that " the adjudicating officer concerned has powers under such an enactment to impose penalty as a measure of deterrence on defaulting employers cannot be concerned so only with augmenting or enriching the coffers of the fund alone. The employer may have reasons beyond his control which led to the default. That is why the prior and subsequent conduct of the employer becomes a significant aspect. Financial difficulties are not always once own making. An establishment crippled with financial difficulties cannot be burden with penal consequences by way of damages, so as to sound death knel of the establishment itself ". In this particular case, as pointed out earlier, the prior and subsequent conduct of the appellant is not helpful to the appellant in any way as the delay in remittance of contribution ended in levy of penalties on various

occasions. Further we shall also keep in mind the consequences of delayed remittance of provident fund contribution as pointed out by the Hon'ble Supreme Court in **Organo Chemicals** case that the Social Security Scheme will be strangled to death if the employers fail to remit the contribution in time. In **M/s.Sreekamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, W.P.(C)no. 10181/2010 the Hon'ble High Court of Kerala held that the authorities under the Act has to assess whether the contribution is not paid due to any deliberate inaction on the part of the employer. In **Elstone Tea Estates Ltd Vs RPFC**, W.P.(C) 21504/2010 the Hon'ble High Court of Kerala held that financial constraints have to be demonstrated before the authorities with all cogent evidence for satisfaction to arrive at a conclusion that it has to be taken as mitigating factor for lessening the liability. In this particular case it is seen that the appellant has not produced any evidence before the respondent authority to prove the financial constraints except a written statement filed by them. As already pointed out even in this appeal the appellant has produced only one page statement to show that the parent company of the appellant is running under loss. The appellant ought to have produced adequate proof before the authority to substantiate the financial difficulties and also to prove that there was delay in payment of wages due to financial difficulties. In **Standard Furniture (Unit of Sudarshan Trading Co Ltd) Vs Registrar, EPF Appellate Tribunal Employees**



**Provident Fund**, 2020 (3) KLJ 528 the Hon'ble High Court of Kerala held that the levy of damages is not automatic and all the circumstances which led to the delay in remitting provident fund contribution has to be factored by the authorities concerned before issuing the order. In **M/s.R.D.34 Ariyakudi Primary Agricultural Co-operative Bank Vs EPF Appellate Tribunal & another**, 2020 LLR 229 the Hon'ble High Court of Madras held that damages levied without considering financial crisis pleaded by the employer on merits and without considering mensrea on the part of the employer are not sustainable.

5. As already pointed out the appellant is a chronic defaulter and was remitting provident fund contributions belatedly for quite long time for which the appellant was being penalised by the respondent on many occasions. Though the appellant pleaded that there was delay in payment of wages the same is not supported by any evidence before the respondent authority or in this appeal. The Hon'ble High Court of Mumbai in **Raliwolf Ltd Vs RPFC**, 2001 (1) LLJ 1423 (Bom.HC) held that granting concessions to an employer on their delayed payment of wages is in violation of fundamental rights guaranteed in Article 21 of the constitution. Even assuming that there was delay in payment of wages to the employees it will not help the appellant in their argument that contribution is delayed because of delayed payment of wages. As per para 30 of EPF Scheme, 1952 the employers shall in the first instance pay both the contributions payable

by himself and also on behalf of the member employed by him. The Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills** case (Supra) held that as per the above provisions the employer is liable to pay both the contributions in the first instance irrespective of the fact whether wages are paid in time or not. The learned Counsel for the respondent argued that even the employees' share of contribution which amounts to 50% of the total contribution deducted from the salary of the employees is not remitted by the appellant 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 the offence of breach of trust the appellant cannot plead that there was no mensrea in delayed payment of contribution at least to the extent of employees' share deducted from the salary of the employees. However considering the fact that the appellant establishment was under loss, they are entitled for some relief as far as damages U/s 14B is concerned. However they are not entitled for any relief for delay in remittance of employees' share of contribution which works out to 50% of the total contribution.

6. Considering the facts, circumstances, pleadings and evidence in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to pay 70% of the damages assessed as per the impugned order. The appeal was admitted and the impugned order was stayed by the EPF Appellate Tribunal subject to the conditions that the appellant shall deposit an amount of Rs.2 lacs with the respondent within 4 weeks vide order dt.09.07.2014. Neither the learned Counsel for the appellant or respondent could confirm the remittance of the amount. Hence the respondent shall confirm the deposit of the above amount.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer