



सत्यमेव जयते

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

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

(Thursday the 19th day of March, 2020)

APPEAL No.82/2018
(Old no.A/KL-58/2016)

Appellant : M/s.Steel Industrials Kerala Ltd
Steel Fabrication Unit
S.N.Puram P.O.
Cherthala - 688582

By M/s.B.S.Krishnan Associates

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

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 07.02.2020 and this Tribunal-cum-Labour Court on 19.03.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/5112/DAMAGES/CELL/(SPL)/2016-17/51 dt. 15.06.2016 assessing damages U/s 14B of EPF & MP Act, 1952(hereinafter referred to as 'the Act') for belated remittance of provident fund contribution for the period from 03/2011 to 09/2015. The total damages assessed is Rs.2,80,300/-.

2. The appellant is a Govt company registered under Indian Companies Act, 1956. The appellant company is facing lot of financial problems because of continuous loss from the year 2000 onwards. The respondent issued notice dt.05.04.2016 to show cause why damages should not be recovered for belated payment of contribution. The appellant was also offered an opportunity for personal hearing. A representative of the appellant attended the hearing and submitted that the company was running under loss and was not in a position to disburse the salary of employees on time. It was also pointed out that the net worth of the company has become negative during the relevant period of time and as per the proceedings of the BIFR dt.31.08.2006, the company was declared a 'sick industrial company' as on 31.03.2004. During the pendency of proceedings before the BIFR, the Cherthala unit of the company was delinked and the net worth of the company has become positive and the BIFR deregistered the company from the purview of SICA Act as per its order dt.09.04.2012. The appellant approached AAIFR in appeal which did not consider the appeal filed by the appellant. As per the directions of the Hon'ble High Court of Kerala dt.17.02.2004 in W.P. 15982/2013, the matter was remitted back to BIFR for re-consideration. The respondent ignored all the above contentions and issued the impugned order.

There was no fault or contumacious conduct on the part of the appellant and thereby the quantum of damages should be compensatory rather than penal.

3. The respondent filed counter denying the above allegations in the appeal memorandum. M/s.Steel Industrials Kerala Ltd is a public sector undertaking owned by Govt of Kerala which is having several industrial units in various districts of Kerala which has been separately covered under the provisions of the Act. The Corporate office at Trichur and two industrial units in Alapuzha district are covered with the respondent. The present assessment is in respect of Steel Fabrication Unit, Cherthala at Alapuzha which is covered under provident fund code no.KR/5112. The appellant establishment defaulted in payment of provident fund contribution during several months for the period from 03/2011 to 09/2015. Belated remittance of contribution will attract penal damages U/s 14B of the Act read with Para 32A of EPF Scheme. The respondent by virtue of powers vested U/s 14B of the Act initiated proceedings under 14B by issuing notice dt.05.04.2016. The appellant was also given an opportunity for personal hearing on 18.05.2016. A detailed month wise statement of delay was also forwarded to the appellant. Personal hearing was afforded to enable the appellant to present his side and raise genuine grievances before the final order is issued. A representative of the appellant attended the hearing on 18.05.2016. He

admitted the delay as indicated in the damages statement sent to the appellant. None of the contentions raised in this appeal were raised before the authority U/s 14B. The respondent after studying the records placed before him reached the conclusion that there was mensrea on the part of the appellant as regards the remittance of statutory dues under the Act. The appellant was registered with BIFR, however no rehabilitation scheme was approved by BIFR. Since no rehabilitation package is approved by the board as provide under Sec 22 of SICA, the appellant cannot plead any benefit for having registered under BIFR. In **Gowri Spinning Mills (P) Ltd Vs APFC, 2007 (2) LLJ 140** the full bench of the Hon'ble High Court of Madras confirmed that the extend of immunity or exemption cannot be extended beyond what is allowed in terms of the second proviso to Sec 14B. The Hon'ble High Court has unambiguously clarified that in order to render the second proviso applicable to an establishment it is mandatory under the statue that the establishment should be a sick industry in terms of SICA, 1985 and a scheme should have been sanctioned by BIFR for rehabilitation. Approximately 50% of the contribution payable by the appellant represents employees' share of contribution actually deducted from the salary of the beneficiary employees and the appellant cannot attribute any finical difficulties for not remitting the same regularly every month within the time stipulated under Para 30 and 38 of

EPF Scheme. In **Chairman, SEBI Vs Sriram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient of contravention of provisions of a civil Act and penalty is attracted as soon as the 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 learned Counsel for the appellant based his contentions on the ground of financial difficulties and lack of mensrea. The learned Counsel for the respondent strongly contested the view that the appellant has not taken these grounds before the respondent authority. On a perusal of the impugned order, it is seen that the representative of the appellant did not raise, any such claim before the 14B authority. In fact he admitted the delay and also the proposed quantification of damages in the delay statement. In **ESS DEE Carpet Enterprises Vs UOI**, 1985 LIC 1116 the Hon'ble High Court of Rajasthan held that the issues which were not raised before the Regional Provident Fund Commissioner in the enquiry cannot be raised in the writ petition. The learned Counsel for the appellant relied on the pendency of the proceedings before BIFR to claim financial difficulties of the appellant. The learned Counsel for the respondent submitted that SICA is no more in existence and Govt of India have notified Insolvency and Bankruptcy Code 2016 in its place.

Since the appellant has not invoked the jurisdiction of 2016 Code, he cannot claim the pendency of proceedings before BIFR or for that matter before National Company Law Tribunal(NCLT). The appellant produced the balance sheet and accounts of the parent company, Steel Industries Kerala Ltd for the years 2011-12 to 2015-16 to prove the financial difficulty of the appellant establishment. On a perusal of these documents, it is seen that the appellant company was running under profit throughout these years. However it has got an accumulated loss which is reflected in the exhibits produced by the appellant. Further it is seen from the documents that there is a current provident fund liability all through these periods and the appellant to certain extent is not bothered about this liability. In the year 2011-12 there is a pending provident fund liability of Rs.21.09 lacs and in the year 2012-13 for the year ending 31.03.2013 the pending provident fund liability is Rs.28.02 lacs. All these documents clearly indicated that the appellant is a chronic defaulter in remittance of provident fund contribution even though the appellant establishment was running on profit during the relevant period of time. Though the appellant pleaded that there was delay in payment of wages to its employees, no document to substantiate the claim was produced before the 14B authority nor in this appeal. The learned Counsel for the respondent argued that the wages of the employees were paid in time and even the

employee's share of contribution which amounts to 50% of the total contribution deducted from the salary of the employees on a month to month basis was not remitted by the appellant in time. Non payment of employee's share of provident fund contribution deducted from the salary of employees is an offence U/s 405/406 of IPC. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea in delayed remittance of contribution. The learned Counsel for the appellant relied on **APFC Vs Management of RSL Textiles Ltd**, Civil Appeal no.96-97/2017, **ESIC Vs HMT Ltd**, 2008 1 LLJ 814, **Kuttanad Rubber Company Vs EPFO**, W.P.(C) 15725/2010, **RPFC Vs Harrisons Malayalam Ltd**, 2013 3 KLT 790, **Hindustan Steel Ltd Vs State of Orissa**, 1970 0 AIR (SC) 253 and **McLeod Russell India Ltd Vs RPFC**, 2014 AIR (SC) 2573 to argue that mensrea is a relevant consideration while imposing damages U/s 14B of the Act. As already stated the appellant cannot claim financial difficulties as an exclusive reason for non remittance of provident fund contribution in time, since the establishment was running on profit on year to year basis, though there is cumulative loss. It is also relevant to point out that when the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees it is not possible to accept the claim of the appellant that there was no intentional delay. As pointed out earlier the documents produced by the

appellant clearly shows that the appellant defaulted in payment of contribution every year. Hence it will come under the category of chronic defaulter and therefore is not entitled to claim the benefit of mensrea for delayed remittance of contribution. The last ground pleaded by the appellant is with regard to financial difficulties of the appellant establishment. Though the financial position of the appellant by itself is not clear, the financial position of the parent company as a whole is definitely in a better position during the relevant period compared to the earlier period when there was an accumulated loss. The appellant, as an undertaking under Govt of Kerala, deserves some leniency in assessment of damages in view of the accumulated financial loss reflected in the annual reports produced by the appellant.

5. Considering the above facts, pleadings and evidence, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages as per the impugned order.

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