



सत्यमेव जयते

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

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

(Tuesday the 2nd day of March, 2021)

**APPEAL Nos.90/2018 (Old No.A/KL-63/2016)
&
286/2018**

Appellant : M/s.Hi-Tech Bamboo Flooring Tile Factory
Jayanthi Road, Nallalam
Kozhikode - 673027

By M/s.B.S.Krishnan Associates &
Adv.K. K. Raziya

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 27.01.2020 and this Tribunal-cum-Labour Court on 02.03.2021 passed the following:

ORDER

Appeal no.90/2018 is filed from order no.KR/KK/28454/ENF-2(5)/2016-17/2093 dt.07.07.2016 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 01/2014 to 03/2014 and belated remittance of employees' share of contribution for the period from 04/2014 to 09/2014. The total

damages assessed is Rs.1,56,709/-. The interest demanded U/s 7Q for the same period is also being challenged in this appeal.

2. **Appeal no.286/2018** is filed form order no.KR/KK/28454/ENF-2(5)/14B/2018-19/2228 dt.18.06.2018 assessing damages U/s 14B of the Act for the period from 07/2014 to 09/2017. The total damages assessed is Rs.5,14,854/-.

3. The appellant is a Govt of Kerala owned company and is a unit of Kerala State Bamboo Corporation. Appellant is established for the upliftment of the traditional workers in the bamboo sector. The factory started functioning from 02/2011 and is covered under the provisions of the Act. The appellant establishment was regular in compliance. While so the respondent issued notice dt.19.04.2016 to show cause why damages U/s 14B of the Act shall not be recovered for the belated remittance of contribution. A representative of the appellant attended the hearing and submitted that they had already sent a reply dt.26.04.2016 which is produced and marked as Annexure A1. Without considering the representation in the right perspective, the respondent issued the impugned orders. There was no contumacious conduct on the part of the appellant in not remitting the dues during the relevant period. The delay that occurred while remitting the contribution was not deliberate but for reasons beyond control of the appellant. The respondent failed to apply his mind to the

facts and circumstances of this case. Even though liability to pay contribution is statutory, to hold that delay automatically attracts damages would be too rigid a way of construing the Section especially since the imposition of damages is punitive in nature.

4. The respondent filed counter denying the above allegations. The appellant committed default in remitting provident fund contribution as stipulated in the statute. When there is delay in remittance of contribution, the appellant is liable to pay damages U/s 14B of the Act read with Para 32A of the EPF Scheme. The pleadings made by the appellant that there was acute shortage of working capital cannot be accepted as remittance of contribution is a statutory obligation on the part of the appellant. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 the Division Bench of the Hon'ble High Court of Kerala held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that wages have been paid or not. Moreover granting any concession to the employer on their refusal to pay wages to the employees, which is a fundamental right guaranteed by Constitution under Article 21, is not valid in law as pointed out by Hon'ble High Court of Mumbai in **Raliwolf Company Vs RPFC and others**, 2001 (1) LLJ 1423 (Bom.HC). When delay in making payments of wages itself is not legal,

granting any further concession consequential therefore can never be contemplated by the legislation.

5. The only ground pleaded by the appellant in this appeal for belated remittance of contribution is that of financial difficulties. According to the learned Counsel for the appellant when the contribution is delayed due to financial difficulties, it is not possible to allege any mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, the appellant failed to produce any documentary evidence before the 14B authority to substantiate their contention of financial difficulties and they filed only the Annexure 1 written statement stating that the appellant establishment is having acute shortage of working capital which resulted in delayed payment of statutory dues. The learned Counsel for the appellant produced certain additional documents such as the annual report for 2013-14 and the provisional balance sheet from 31.03.2015 onwards. As pointed out by the Hon'ble Supreme Court in **Aluminium Corporation Vs Its workman**, 1963 (2) LLJ 629 SC the current assets and liabilities reflected in the balance sheet cannot be taken as sacrosanct unless the figures shown in the balance sheet and Profit & Loss account is proved before the authority. In this case, other than the Annual report for 2013-14 all other documents produced are provisional statements which cannot be legally accepted for assessing the real

financial position of the appellant establishment. Further the provisional statements are also summary statements and no details are available and therefore it is difficult to accept those documents to decide the financial position of the appellant establishment. In the annual report of 2013-14 at page no.1 it is stated that the parent company of the appellant had achieved a turnover of Rs.1119.57 Lakhs. It is also stated at page no.17 that the appellant "is regular in remitting statutory dues such as provident fund". The learned Counsel for the respondent pointed out that the parent company of the appellant is having approximately Rs.11.5 Crores revenue from operations and the appellant corporation is spending approximately Rs.5.8 Crores towards employee benefit expenses which includes salary, wages, allowances, contribution to provident fund, gratuity etc. It is true that the loss as reflected in the Profit & Loss account is around Rs.7.14 Crores and the cumulative loss is around Rs.39.5 Crores. The salary component alone comes to approximately Rs.4.6 Crores and the provident fund contribution is approximately Rs.45.7 Lakhs for the year ending 31.03.2014. It is also seen from the Annual report that the appellant had paid huge amounts towards pay revision to its employees. The details as reflected in the Annual report is discussed in detail only to pointed out that the delay in remittance of provident fund contribution was not only due to the loss incurred by the appellant. It is also pointed out here that the

above financial results are in respect of the parent company of the appellant M/s.Kerala State Bamboo Corporation Ltd. As already pointed out the total turnover of the corporation is Rs.1190.57 Lakhs out of which Rs.666.62 Lakhs is the revenue from sale of bamboo ply which is the product of the appellant factory. Hence looking at from any angle it is not possible to hold that the loss or the cumulative loss as reflected in the documents produced by the appellant can be an exclusive reason for belated remittance of provident fund contribution.

6. The learned Counsel for the respondent argued that the appellant failed to remit even the employees' share of contribution deducted from the salary of the employees in time. Though the learned Counsel for the appellant argued that there was delay in payment of wages to the employees, no documents to substantiate the claim was produced by the appellant. Employees' share of contribution is deducted from the salary of the employees as and when the salary/wages is paid to the employees. The employees contribution works out to 50% of the total contribution. Non payment 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 belated remittance of contribution, atleast to the extend of 50% of the total contribution

which is the employees' share of contribution. The learned Counsel for the appellant relying on the decision of the Division Bench of the Hon'ble High Court of Kerala in **Standard Furniture Vs EPF Appellate Tribunal and others**, W.A. no.996/2015 argued that damages U/s 14B of the Act is not automatic and that all the circumstances which led to the delay in remitting provident fund contribution have to be factored by the authority concerned before issuing an order U/s 14B. He also pointed out that the impugned order is a complete non speaking order and therefore cannot be sustained as the order does not disclose any reasons. It may be seen that the appellant filed the Annexure 1 statement before respondent authority. The only ground taken in the written statement is that there was acute shortage of working capital and which is not supported by any evidence. In such a situation it is only natural that the respondent can only elicit the statutory provisions and assess the damages as provided under the Act and Scheme provisions. It was upto the appellant to file a proper written statement alleging financial difficulties if any, and also support the same with documentary evidence. In such a situation if the respondent issues a non speaking order without looking into the claims made by the appellant, such orders will indeed be hit by the dictum laid down by the Hon'ble High Court in the above referred decision. It is seen that in many cases U/s 14B, the employers never attend the proceedings before the authority

and if at all they attend the hearing, they admit the delay and accordingly the authority U/s 14B issues orders assessing damages. In such a scenario it is not possible to blame the respondent authority for having failed to issue a detailed speaking order the grounds of which were never raised before him. The learned Counsel for the appellant also relied on the decision of the Hon'ble High Court of Kerala in **Harrisons Malayalam Ltd Vs EPF Appellate Tribunal and others**, W.P.(C) no.26545/2010 to argue that financial difficulties of the appellant is a mitigating factor while deciding the quantum of damages U/s 14B of the Act. As already pointed out, it is not possible to accept the argument of the learned Counsel for the appellant that the delay in remittance of provident fund contribution was only due to the financial difficulties of the appellant establishment. However the documents produced by the appellant would clearly prove that the appellant was suffering huge losses during the relevant point of time. It is also seen that the appellant was run on the grant received from the Govt apart from the revenue income received by them. In view of the above, the appellant is entitled for some relief with regard to the assessment of damages.

7. Considering the facts, circumstances, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

8. The learned Counsel for the respondent pointed out that no appeal is maintainable against an order issued U/s 7Q of the Act. On a perusal of Sec 7(I) of the Act, it is seen that there is no provision to file an appeal from an order issued U/s 7Q. The Hon'ble Supreme Court in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal from an order issued U/s 7Q is maintainable. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that no appeal can be filed from an order issued U/s 7Q of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer