



सत्यमेव जयते

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

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

(Monday the 2<sup>nd</sup> day of November, 2020)

**Appeal No.420/2019**

Appellant : M/s. Bristo Foods Pvt.Ltd  
NIDA, Kanjikode, Menopara Road,  
Palakkad - 678621

By Adv. P. Ramakrishnan  
Adv.C. Anil Kumar

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Kozhikode – 673 006

By Adv. Abraham P. Meanchinkara

This appeal came up for hearing on 19/10/2020  
and this Industrial Tribunal cum Labour Court issued  
the following order on 02/11/2020.

## **ORDER**

Present appeal is filed from Order No. KR /KKD /17027/ ENF4(2)/14B/2019/3154 dt. 04/09/2019 assessing damages U/s 14B of the EPF & MP Act, 1952 ( hereinafter referred to as 'the Act'.) for belated remittance of contribution for the period from 05/2018 to 05/2019. Total damages assessed is Rs. 8,24,344/-.

2. The appellant is a company incorporated under Company's Act, 1956 and is engaged in manufacture, supply and export of confectionery products. From the very inception the appellant establishment was incurring very heavy losses. Labour unrest and periodical strikes by the trade unions also affected the functioning of the establishment. On account of accumulated loss, the appellant establishment was declared 'sick unit' by the District Industries Centre. A true copy of this certificate dt. 30/03/2004 issued by the District Industry Centre is produced and marked as Annexure A1. In spite of

the best efforts there was delay in remitting contribution for the period from 05/2015 to 05/2019. The respondent issued a notice dt. 14/06/2019 directing the appellant to show cause why damages U/s 14B shall not be levied for the belated remittance of contribution. The appellant was also afforded an opportunity for personal hearing. The appellant appeared before the respondent and submitted regarding financial difficulties. A true copy of the relevant extract from the audited Balance Sheet is produced and marked as Annexure A3. A copy of the statement filed by the appellant is produced and marked as Annexure A4. Without considering Annexure A3 and A4 the appellant issued the impugned order. The respondent did not consider the dictum laid on the Hon'ble Supreme Court of India in **APFC Vs Management of RSL Textiles Ltd**, 2017(3) SCC 110 and the decision of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd.**, 2013 (3) KLT 790 wherein the Hon'ble Courts held that mensrea is a relevant consideration while levying damages and the financial constraints shall also be considered by the 14B authority.

3. The respondent filed counter denying the above allegations. The appellant has committed default in remitting Provident Fund dues for the period from 05/2018 to 05/2019. When there is delay in payment of contribution the appellant is liable to pay damages in accordance with the provision of Sec 14B of the Act read with Para 32A of the Employees Provident Fund Scheme. Hence the appellant was summoned U/s 14B to show cause why damages shall not be levied for the belated remittance of contribution, on 26/07/2019. There was no representation on 26/07/2019 and therefore the enquiry was adjourned to 02/09/2019. A representative of the appellant appeared and admitted the delay. He also submitted that the delay was due to financial difficulties. After considering the submissions made by the representative of the appellant, the impugned order was issued. The Hon'ble Supreme Court of India in **Hindustan Times Ltd Vs Union of India and another**, 1998 (2) SCC 242 has clearly laid down the principle that 'default on the part of the employer based on plea of power cut, financial problem relating to other indebtedness or the delay of realization of amount paid by

cheque or drafts cannot be justifiable grounds for the employer to escape the liability. In **Calicut Modern Spinning and 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 contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not. The Hon'ble Supreme Court of India in **Chairman SEBI Vs Sri Ram Mutual Fund**, Civil Appeal No 9523-9524 of 2003 held that

“ In our opinion the Tribunal has miserably failed to appreciate that by setting aside the order of the adjudicating Officer the tribunal was setting a serious wrong precedent whereby every offender would take shelter under alleged hardships to violate the provision of the Act. In our opinion mensrea is not an essential ingredient for contravention of the provision of a Civil Act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation

becomes immaterial ; In other words the breach of civil obligation which attracts penalty under the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not ”.

4. The learned Counsel for the appellant argued that the financial difficulties of the appellant is the main reason for delayed remittance of contribution. According to the learned Counsel the accumulated loss of the company as on 31/3/2018 was Rs.7.45 crores and the loss as on 31/03/2018 is 46.29 crores. The Annexure A3 statement of Profit and Loss account for the year ended 31/03/2018 indicate that the company was under loss during the relevant point of time. However, it was held by the Hon'ble Supreme Court in various decisions including **Aluminium Corporation Vs Their Workmen**, 1964 (4) SCR 429 that mere statements in the Balance Sheet as regards current assets and current liabilities cannot be taken as sacrosanct. However, Annexure A3 indicates that the company was under loss during the relevant point of time. The appellant has also produced Annexure A1

certificate of the registration issued by the District Industries Centre on 30/03/2004 indicating that the unit is registered for consideration of revival under the sick unit revival programme of Industries Department, Government of Kerala. The learned Counsel for the appellant also argued that in view of the financial difficulties this Tribunal may find that there was no mensrea for delayed remittance of contribution. The learned Counsel for respondent pointed out that the appellant has no case that wages were not paid to the employees in time. When wages were paid, the employees' share of contribution is deducted from the salary of the employees. The non remittance of employees share of contribution deducted from the salary of employee is an offence of U/s 405 & 406 of Indian Penal Code. Having committed an offence of breach of trust the appellant cannot plead that there was no mensrea in belated remittance of contribution at least employees' share of contribution. Further, the appellant had already violated the mandate of Paras 30, 36 and 38 of the EPF Scheme.

5. Considering all 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 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 60% of the damages assessed U/s 14B of the Act.

Sd/-

**(V. Vijaya Kumar )**  
Presiding Officer