



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

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

(Friday the 23<sup>rd</sup> day of October, 2020)

**Appeal No.693/2019**

Appellant : M/s. Riches Jewel Arcade LLP  
XIII/1536, Opp. Bus Stand  
Mannarkkad,  
Palakkad - 678582

By Adv. Ashok B Shenoy

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

By Dr. Abraham P Meachinkara

This appeal came up for hearing on 17/03/2020 and this Industrial Tribunal cum Labour Court issued the following order on 23/10/2020

**ORDER**

Present appeal is filed from Order No. KR/ KKD/ 1811061/Enf4(2)/14B/2019-20/3411 dt. 25/09/2019 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 01/2018 to 05/2019. The total damages assessed is Rs.72,097/-

2. The appellant is a limited liability partnership Company and covered under the provisions of the Act. The appellant started business on 17/01/2018 and since then they started their process for registration under EPF through the website of EPFO. Their efforts to register online failed due to technical issues and errors with the message “ Pan Card already in use”. When the appellant attempted the registration on Shram Suvidha site they were redirected to contact persons in the field. In view of the above the appellant could not remit the contribution in respect of their employees in time. The difficulties were brought to the notice of the respondents’ office and registration process were completed in Nov 2018. A copy of the letter dt. 02/08/2018 addressed to the respondent is produced and marked as Annexure A1. A copy of the email sent by the appellant to the respondent is produced and marked as Annexure A2. Ever since

registration process is completed the appellant is regular in compliance. The appellant received a notice from respondent proposing to the levy of damage U/s 14B of the Act for belated remittance of contribution for the period from 01/01/2018 to 31/05/2019. The appellant was also afforded a personal hearing and attended the hearing on 06/09/2019. The representative of the appellant also brought to the notice of the respondent the reasons for the delay in remittance of contribution. The delay was not willful or deliberate and rather not attributable to them. The copy of written objection filed by the appellant is produced and marked as Annexure A4. Without considering any of the pleadings of the appellant, the respondent issued the impugned order. The impugned order is non speaking and vitiated by non application of mind in as much as none of contention and pleadings have been considered or adjudicated in the impugned order. All these things are relevant in view of various decisions by the Apex Court. It is settled legal position that while

determining quantum of damages the assessing authority shall make an objective consideration depending upon the facts and circumstances of each case. The impugned order is bad and illegal in as much as the delay of remittance is reckoned therein without considering the 5 days of grace period allowed to employers for payment of contribution.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. Hence the establishment is bound to pay statutory contribution as provided under the Act and the Schemes. The appellant delayed remittance of Provident Fund contribution of its employees for the period from 01/2018 to 05/2019. Any delay in remittance of contribution will attract damages U/s 14B of the Act. Therefore notice dt. 11/07/2019 was issued to the appellant to show cause why damages as envisaged U/s 14B of the Act should not be levied for the belated remittance of contribution. The appellant was also given an opportunity for personal hearing. A

representative of the appellant attended the hearing on 06/09/2019 and admitted delay in remittance of contribution. He pleaded that due to technical errors the payment could not be made on time. The Act is a social welfare legislation and the successful working of social security scheme depend on prompt and regular compliance made by the employer. Hence damages are levied as a penal measure to secure prompt compliance. One of the units of the appellant situated at Kalpetta, Wayanad was registered under EPF with Pan Number AAMFR 88B and PF Code number was allotted to that unit on 21/01/2013. The appellant started another establishment in the same name at Palakkad and he tried to register the establishment with the same 'Pan Number' used earlier. Since the same pan number cannot be used for coverage under the Act for different establishments the system threw an error "Pan Card already in use". The appellant had an option to take another pan number or to cover the second unit as a branch of the first unit. These options were available on

the website for online registration of appellant establishment. The appellant also could have got in touch with the district office of the respondent situated at Palakkad. Having failed to exercise any of those options, the appellant cannot plead that the remittance could not be made in time due to technical difficulties. In **Calicut Modern Spinning and Weaving Mills Pvt Ltd Vs RPF**, 1982 KLT 303 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 the wages have been paid or not.

4. The only ground that pleaded is that the delayed remittance of contribution was due to technical difficulties in getting registration under the Act. The appellant started functioning on 17/01/2018. According to the learned Counsel for the appellant, they tried to get a Provident Fund registration immediately after commencement of their activity. However the attempt for online registration failed because of technical issue

which threw a message “ Pan Card already in use”. The difficulties were brought to the notice of respondent vide his letter dt.02/08/2018 which is marked and produced as Annexure A1. It is surprising to see that the appellant waited for seven months before the problem was brought to the notice of respondent. Further as rightly pointed out by the learned Counsel for the respondent, the error message is very clear that the pan card used for registration by the appellant was already used for taking registration of another establishment. Ideally the appellant should have contacted the office of the respondent to find a solution to the problem. Instead the appellant waited for 10 months before he approached the respondent in November to resolve the issue. According to the learned Counsel for the respondent the technical snags, if any, of the website of an organization like EPFO cannot subsist for a few hours or at the best for a few days. It is seen from Annexure A3 that the delay in remittance is 280 days and the appellant cannot claim that the delay was

exclusively due to technical snags. It is very clear from the pleadings of the appellant that the employees' share of contribution was being deducted from the salary of the employees and was being withheld by them. Non remittance of employees' share of contribution deducted from the salary of the employees is an offence of breach of trust U/s 405 & 406 of Indian Penal Code. However , it is not possible to attribute any mensrea in the delayed remittance of contribution in the present circumstances of this case. The learned Counsel for the respondent pointed out that there is an element of mensrea as they delay of ten months cannot be attributed to technical reasons only.

5. Considering the fact, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 75% of the damages assessed as per the impugned order.



Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 75 % of the damages assessed U/s 14B of the Act.

Sd/-

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