



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 18th day of October 2021)

APPEAL No. 267/2019

Appellant : M/s. Aliya Hotel & Lodge & Restaurant
Riyas Complex
R.S.Road
Thrissur – 680 001

By Adv. K K Premlal &
Adv. Vishnu Jyothis Lal

Respondent : The Assistant PF Commissioner
EPFO, Bhavishya Nidhi Bhavan
Kaloor, Kochi – 682 0017.

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 13/07/2021
and this Tribunal-cum-Labour Court on 18/10/2021 passed
the following:

ORDER

Present appeal is filed from order No.KR/KCH/15030/
Penal Damages/2018/4576 dated 13/12/2018 assessing
damages under Section 14B of EPF and MP Act (hereinafter

referred to as 'the Act') for belated remittance of contribution for the period from 01/04/1996 to 31/03/2018. Total damages assessed is Rs.3,70,411/- (Rupees three lakh seventy thousand four hundred and eleven only)

2. The appellant establishment is engaged in Hotel business and is covered under provisions of the Act. The establishment was not functioning properly because of the accrued loss. The hotel was closed by the end of July 2016. There was some delay in remittance of Provident Fund contribution due to the financial crisis. The appellant received a notice dated 19/05/2014 alleging delay in remittance of contribution for period from 08/1998 – 02/2010. The proposed levy is for 2,78,331/-. A true copy of the said notice is produced and marked as Annexure 1. Since the records relating to the complete period was not available, the appellant sought adjournments. During the course of enquiry, it was found that the damages for the period from 08/1998 – 02/2001 was already levied and was remitted by the appellant. This fact was brought to the notice of the respondent authority at the time of hearing. Due to delay in initiating proceedings

under 14B, the appellant could not trace out all the relevant documents to verify the correctness of the dates and payment details furnished in the delay statement. Ignoring the contentions of the appellant, the respondent authority issued the impugned order assessing damages to the tune of Rs. 3,70,411/-. The assessment as per the impugned order is much more than the damages claimed in the Annexure 1 notice. The respondent authority failed to notice that after introduction of Sec 7Q, the damages under Sec 14B has lost its relevance and has become a totally penal provision. The respondent authority failed to exercise its discretion granted under Sec 14 B of the Act. Penalty can be claimed only in cases where there is existence of mensrea or actusreus to controvert a statutory provision. The Hon'ble Supreme Court of India in ***Assistant Provident Fund Commissioner Vs Management of RSL Textiles India Private Limited*** (2017 (3) SCC 110) confirmed the above position. The law laid down by the Hon'ble Supreme Court in ***Organo Chemical Industries Vs Union of India*** 1979 (4) SCC 573 has substantially changed after the introduction of Sec 7Q of EPF and MP Act.

3. The respondent filed counter denying the above allegations. Present appeal is filed challenging Annexure 2 proceeding dated 13/12/2018 under Sec 14B levying damages for the period from 04/2001 to 02/2010, 03/2010 to 07/2013 and 08/2013 to 07/2016. On a review of the file pertaining to the damages of the appellant establishment, it was noticed that an enquiry initiated against the appellant for belated remittance of contribution on 06/06/2014 was not concluded. Hence a fresh summons for a period from 04/2001 to 02/2010 excluding the period for which damages has already been levied, ie; 8/1998 – 02/2001, 03/2010 to 07/2013 and 08/2013 to 07/2016 was issued to the appellant fixing the enquiry on 24/10/2018. A representative of the appellant attended on 24/10/2018 and the revised calculation sheets were made available to him. Since the appellant requested for time to verify the revised statement, the enquiry was adjourned to 06/12/2018. There was no representation from the appellant and no objection regarding the revised delay statement was also filed by the appellant. The delay of 12 years in initiating the assessment of the damages was justified

by the Hon'ble High Court of Karnataka in **Gopalakrishna Textiles Mills Private Ltd. Vs Regional PF Commissioner and Another** - 1998 (92) FJR. 265. The Hon'ble High Court of Gujarat in **C.P Kotak Balmandir Vs Regional Provident Fund Commissioner and another** – SCA No. 3749 of 2011 held that mere existence of financial hardship is not sufficient explanation for delay in payment of contribution unless it is also shown that no salaries were paid to the employees and consequently no deduction were made during the relevant period of time. The Hon'ble High Court of Kerala in **Ernakulam District Co-operative Bank Vs Regional Provident Fund Commissioner** – 2000(1) LLJ 1662 held that there may be sufficient reasons for the appellant to make belated payment. However that is not a ground for granting exemption for paying penalty or damages. Annexure 1 notice dated 19/05/2014 was issued to the appellant fixing the enquiry on 06/06/2014. None attended the hearing and therefore the enquiry was adjourned to 16/07/2014. On the request of the representative of the appellant, the enquiry was adjourned to 19/09/2014, 28/11/2014 and 25/02/2015.

The enquiry concluded on 06/12/2018 on the basis of the available records. There is a clear finding regarding mensrea in the Annexure 2 speaking order dated 13/12/2018. The appellant cannot ignore the statutory liability cast upon him as an 'employer' under paragraph 30, 36 and 38 of EPF Scheme. As per the above provisions, the appellant is liable to remit the contribution in variably within 15 days of close of every month. The impugned order was issued after giving adequate opportunity to the appellant and is a well speaking Order. In the present case, there is a specific finding regarding mensrea and therefore the decision of the Hon'ble Supreme Court in ***Assistant Provident Fund Commissioner Vs Management RSL Textiles India Private Ltd.*** (supra) is not applicable. The delay in remittance of contribution is so huge that the respondent authority will not be in a position to ignore the same. The delay in some months is more than six years. The appellant clearly violated the provisions under Para 30, 36 and 38 of EPF scheme and it is a clear case of statutory violations and there is mensrea in belated remittance of contribution.

4. The respondent authority initiated an enquiry under Sec 14B of the Act vide Annexure 1 notice for belated remittance of contribution for period from 01/04/1996 to 11/04/2014. A delay statement was also enclosed along with Annexure A1. The impugned order states that the damages are assessed for belated remittance of contribution for the period from 01/04/1996 to 31/03/2018. According to the learned Counsel for the appellant, the period and the quantum of damages proposed in the notice and also in the impugned order varies substantially. In the written statement filed by the respondent, it is stated that “during the course of hearing, it was noticed that a previous enquiry initiated on 06/06/2014 was not included and therefore a fresh summons for the period from 04/2001 to 02/2010 (excluding 08/1998 to 02/2001), 03/2010 to 07/2013 and 08/2013 to 07/2016 was issued to the appellant. It is also stated in the written statement that a revised calculation sheet for damages was also provided to the representative of the appellant on 04/10/2018”. According to the learned Counsel for the respondent, there is no difference

in the dates and quantum of damages as per the revised notice. It is seen from the impugned order that the damages was assessed for belated remittance of contribution for period from 01/04/1996 to 31/03/2018 and the impugned order is totally silent regarding the periods which are excluded from the assessment. The impugned order is also silent regarding any revised statement given to the representative of the appellant. The appellant also conveniently suppressed the fact that they received a revised calculation sheet and a revised summons for assessment of damages. As already pointed out the impugned order states that the damages are calculated form 01/04/1996 whereas the written statement filed by the respondent states that the damages are assessed only for the period from 04/2001 to 02/2010, 03/2010 to 07/2013 and 08/2013 to 07/2016. Hence it is seen that the respondent authority is not clear about the periods for which the damage is assessed. The impugned is also not a speaking order to that extend.

5. Though the appellant raised various other issues, it is felt appropriate to remand the matter back to the respondent authority to issue a proper summons along with a complete delay statement before quantifying the damages. When penalty is imposed, the appellant has got a right to know the period for which the proceedings are initiated and the delay in remittance of contribution, so that the matter can be properly defended before the respondent authority. While issuing the order the respondent authority shall ensure that the period as per the notice is only covered in the assessment order. The respondent authority shall also meet all the contentions raised by the appellant in the impugned order itself. The practice of filling up gaps while filing written statement is not the proper procedure and cannot be accepted in law.

6. All the other contentions raised by the appellant in this appeal are left open to be decided by the respondent authority while deciding the matter afresh,

7. Hence the appeal is allowed, the impugned order is set aside and matter is remitted back to the respondent to re-decide the matter as per the directions given above after issuing fresh notice to the appellant. If the appellant fails to appear or fails to produce the records called for, the respondent authority is at liberty to take a final decision according to law.

Sd/-

(V. Vijaya Kumar)
Presiding Officer