



सत्यमेव जयते

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

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

(Tuesday the 4th day of November 2021)

APPEAL No. 340/2018

Appellant : St. Joseph's College of
Engineering and Technology
Bharananganam, Pala,
Kottayam – 686 576

By Adv. C B Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Thirunakkara
Kottayam – 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 28.07.2021 and this Tribunal-cum-Labour Court on 04.11.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KTM/20095/APFC/Penal Damage/14B/2018–2010/1551 dated 31.08.2018 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 09/2014 – 02/2017 (remittance of EPF dues between 17.05.2012 and 31.03.2018). Total damages assessed is Rs.46,307/-. (Rupees forty six thousand three hundred and seven only).

2. The appellant is an educational institution covered under the provisions of the Act. The appellant extended the benefits under the Act to all the staff from their date of eligibility. However the employees engaged in the hostels run by the students were not enrolled to the Fund. In Jan 2017, the Central Government announced an Employees Enrolment Campaign (EEC) to provide opportunities to the employers to come voluntarily and declare the details of employees who were eligible but not enrolled to the fund. The appellant decided to enrol all the hostel employees taking advantage of the Scheme. Accordingly 30 employees were enrolled to the Fund from September 2014 to December 2016. A declaration as required by the Scheme was filed 20.03.2017. The contribution as required under the Scheme for the period from 09/2014 – 11/2016 was remitted on 25.03.2017. The contribution for the month of December 2016 was remitted on 28.03.2017.

However for want of some clarification, payment of Rs.1/- per annum towards damages and the interest under Sec 7Q could not be remitted along with the employer's contribution. A true copy of the communication dated 27.03.2017 is produced and marked as Annexure A2. After 15 days of submission of the declaration, the respondent office insisted for the payment of interest under Sec 7 Q and damages of Rs.1/- per annum. Accordingly the appellant remitted the amount on 12.04.2017. The respondent authority issued a summons dated 10.07.2018 directing the appellant to show cause why damages under Sec 14B and interest under Sec 7Q of the Act shall not be levied for belated remittance of contribution for period from 17.05.2012 to 31.03.2018. A true copy of the summons is produced and marked as Annexure A3. A representative of the appellant attended the hearing and produced chalangans remitted online towards interest and damages. A true copy of the chalan is produced and marked as Annexure A4. The appellant remitted contribution, interest and damages as required under the Scheme. However there was some delay in payment of interest and damages. A representation was also filed before the respondent authority explaining the circumstances. A true copy

of the representation dated 09.08.2018 is produced and marked as Annexure A5. Ignoring the contentions of the appellant, the respondent issued the impugned order. Even the regular calculation of damages and interests are not done on the basis of the circular dated 29.05.1990. A true copy of said circular is produced and marked as Annexure A6.

3. The respondent filed counter denying the above allegations. Employees Enrolment Campaign was an amnesty scheme for the EPF defaulters by incorporating paragraph 82A in the Employees Provident Fund Scheme, 1952 to provide an opportunity to such employers to voluntarily come forward and declare details of non-enrolment of employees who were entitled for PF membership between 01.04.2009–31.12.2016, but could not be enrolled for any reason. The Scheme was in force between 01.01.2017 – 31.03.2017 and further extended till 30.06.2017. Under Para 82A(2) the employer was required to furnish a declaration in such form as may be specified by Central Provident Fund Commissioner. As per Para 82A (3) once the declaration is furnished, the employer is required to remit the employers provident fund contribution and the

employees provident fund contribution, if deducted from the salary of the employees' wages, along with interest payable in accordance with Sec 7Q of the Act and nominal damages of Rs.1/- per annum within 15 days of furnishing the declaration. The time limit provided is 15 days from the date of filing the declaration. The incentives for the employers who come under the Scheme included waiver of employee's share of contribution, if not deducted from the wages, waiver of administrative charges and reduction of damages to Rs.1/- per annum. As per Para 82A(6), if the employer fails to remit the Provident Fund contribution, interest and damages payable by them within 15 days of the date of furnishing the declaration, the declaration furnished under the campaign shall become invalid. A true copy of the notification G.S.R 1191 (E) dated 30.12.2016 issued by the Ministry of Labour and employment, of the Central Government is produced and marked as Annexure R1. A true copy of the notification of G.S.R 1191 (E) dated 30.12.2016 is produced and marked as Annexure R2. A true copy of the notification G.S.R 1192 (E) dated 30.12.2016 is produced and marked as Annexure R3. A true copy of the notification S.O. 4250(E) dated 30.12.2016 issued by the ministry is produced

and marked as Annexure A4. The scheme was further extended upto 30.06.2017 vide Annexure R5 notification dated 29.03.2017. A true copy of the circular dated 17.01.2017 issued by the ministry summing up the salient features of Employees' Enrolment Campaign 2017 is produced and marked as Annexure R6. The appellant furnished the declaration on 20.03.2017. To avail the benefits of the Scheme, the appellant ought to have remitted the contribution, interest and damages on or before 04.04.2017. The appellant remitted only the contribution before the due date. Hence there is a clear violation of Paragraph 82A (3) and making the declaration invalid as per Paragraph 82A (6). The claim of the appellant that they approached the respondent office for clarification is not correct. There is no lack of clarity in Annexure R1 – R6. The appellant paid interest and damage only on 13.04.2017 and therefore the benefits under the Scheme were not available to the appellant. Consequent on failure of the appellant to comply with the terms of the Scheme, the declaration filed by the appellant was rendered invalid. Therefore the appellant is liable to pay damages for belated remittance of contribution. The respondent therefore issued Annexure A3 summons to the

appellant. Appellant's representative appeared in the enquiry and submitted a statement of defence and payment records. From the records it was clear that the appellant failed to remit the interest and damages within the prescribed period of 15 days from furnishing the declaration. After considering all the points raised by the appellant, the respondent issued the impugned order.

4. Government of India, Ministry of Labour and Employment came with a Scheme called "Employees Enrolment Campaign" 2017 to facilitate the employers to enrol their non-enrolled employees who were otherwise eligible to be enrolled to the fund. Government of India also assured the employers that no questions will be asked regarding the non-enrolment of employees from the due date of eligibility. The Government of India issued notifications Annexure R1 to R6 incorporating Section 82A in the EPF Scheme 1952. As per the above Scheme, the establishments are required to file a declaration with details of the employees to be enrolled to the fund. The Scheme also mandates that within 15 days of filing of the declaration, the appellant shall remit the Employers share of

contribution, the employees share of contribution (if deducted from the salary of the employees) interest under Sec 7Q of the Act and a nominal damages of Rs.1/- per annum. The incentives given to the employers were

1. The employees' share of contribution is waived, if the same is not deducted from the salary of the employees.
2. The administrative charges are waived
3. Only a nominal damage of Rs.1/- per annum is charged on belated remittance of contribution.

The appellant decided to avail the benefits under the EEC Scheme in respect of 30 employees employed by them in the hostels. They filed their declaration on 20.03.2017. As per the Scheme provision the appellant is required to remit the employers contribution, interest under Sec 7Q and nominal damages of Rs.1/- annum on or before 04.04.2017. The appellant remitted the contribution on 04.04.2017. However the damages and interest were paid only on 13.04.2017. According to the learned Counsel for the respondent, the appellant establishment cannot avail the benefits under the Scheme and they are liable to remit damages.

As per para 82A(3), *“the employers shall within 15 days from the date of furnishing the declaration referred to in sub para (2) remit the employers contribution payable in accordance with the provisions of the Scheme and the employees contribution deducted from the employees’ wages along with interest payable in accordance with sec 7Q of the Act and damages.*

Provided that the employer shall not be required to pay the employees contribution if the same has not been deducted from the wages of the employee”.

As per para 82 A(6) *“If the employer fails to remit the contribution, interests and damages payable by him as referred to as in sub Para (3), then the declaration sent by the employer under sub Para (2) shall be deemed to have not been made by such employer under the scheme.”*

From the above provisions and facts of this case it is clear that the appellant establishment failed to remit the damages and interest as required under the Scheme on or before

04.04.2017. The appellant therefore cannot claim the benefits under the Scheme. However it is not possible to allege any mensrea in belated remittance of contribution as the appellant has taken the responsibility of declaring the non-enrolled employees and remitting the contribution within the stipulated time. The appellant was liable to pay only Rs.1/- per annum as damages and the amounts be paid within 15 days as part of the Scheme, and the interest under Sec 7Q of the Act.

5. The learned Counsel for the respondent also raised an issue regarding a circular dated 29.05.1990 issued by the Head office of the respondent organisation. According to the learned Counsel, the damages include the 12% interest also and therefore the quantification of interest is not correct. It is pointed out that the statutory provisions are very clear and the defaulting establishments will have to pay both interest under Sec 7Q and damages under Sec 14B of the Act. Any administrative instruction issued in contradiction to the statutory provisions will have no validity. Further it is pointed out that the circular dated 29.05.1990 has no validity after amendment of Para 32A of the Scheme.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to hold that interest of justice will be met if appellant is directed to remit 60% of the damages assessed under Sec 14B of the Act.

7. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 60% of the damages assessed under Sec 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer