



सत्यमेव जयते

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

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

(Tuesday the 23rd day of November 2021)

APPEAL No. 356/2019

Old No. 643 (7) 2015

Appellant : M/s. M.M.Publications Ltd.
P.B.No. 226,
Kottayam – 686 001

By M/s. B.S.Krishnan Associates

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

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on 30.08.2021 and this Tribunal-cum-Labour Court on 23.11.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KTM/3700/PD/2014/3598 dated 18.05.2015 assessing damages under Section 14B of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period

from 02/2000 to 12/2003 and 11/1994 to 10/2013. Total damages assessed is Rs.5,56,382/-(Rupees five lakh fifty six thousand three hundred and eighty two only)

2. Appellant establishment is engaged in the business of printing and publishing of various magazines. The appellant is covered under the provisions of the Act. Though the appellant never delayed contribution in respect of its regular employees, there were some delay in remittance of contribution in respect of contract employees for the period from 03/2012 – 07/2012 due to some software issue of the respondent organisation. The respondent issued a notice dated 23.06.2014 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. It was also informed that the earlier notice dated 25.02.2013 was not correct and therefore a fresh notice was also enclosed. Along with the said letter, two statements bearing numbers KR/KTM/0003700/000/Enf 501/damages/1827 and KR/KTM/0003700/000/Enf 501/Damages dated 21.04.2014 were also issued to the appellant. In the former letter it was pointed out that on scrutiny of the records, the remittances made during 24.05.2000 to 17.04.2014, certain

payments were made after the due date. Hence the respondent proposed an amount of Rs. 2,22,148/- by way of damages. In the subsequent letter it was pointed out that for the period 24.05.2000 to 17.04.2014, certain payments were found to be delayed and it was proposed to levy damages to the tune of Rs.5,12,920/-. The appellant was also given an opportunity for personnel hearing on 02.06.2014. The copies of the two notices are produced and marked as Annexure A1 and Annexure 2 respectively. A representative of the appellant appeared before the respondent and filed a detailed reply dated 01.07.2014. A copy of the reply is produced and marked as Annexure A3. In the reply, the appellant has stated that the delay in remittance pertains to the period from 11/1994 and the claim shall be limited to 5 years prior to the date of raising of the claim. It was further stated that although the contribution were paid within 15 days of subsequent month, the respondent has taken different dates as date of remittance and on the basis of which the delay was reckoned. It was also pointed out that the appellant remitted the employee's share which could not be recovered from the employees. The appellant had paid contribution for the period from 04/2005 to 10/2011 to the tune

of Rs.6,53,838/- and an amount of Rs. 2,69,886/- towards interest. On perusal of Annexure 2, it would reveal that the respondent while issuing the statement, determined the amount of damages quite arbitrarily. The respondent has determined the amount more than once for the wage months 02/2011, 04/2011, 06/2011 to 12/2011 and 01/2012 to 03/2012. Hence it is clear that the amount demanded as damages is imaginary and liable to be set aside. Without considering the written as well as the oral submission of the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A4. The respondent had demanded damages even for the period 11/1994 – 12/2009. The respondent authority ought to have taken into consideration the various factors for delay in making the payments. The respondent ought to have considered the fact that there was no contumacious conduct on the part of the appellant in paying the contribution on time.

3. The respondent filed counter denying the above allegations. The appellant establishment is liable to remit contributions within 15 days of close of the month as required

under Para 38 of EPF Scheme. As there was delay in remittance, a summons dated 06.05.2014 was issued to the appellant to show cause as to why damages as provided under Sec 14B of the Act should not be recovered. The appellant was also given an opportunity for personnel hearing. Before issuing orders under Sec 14B, two show cause notices were issued to the appellant along with calculation sheet of damages. One for the period 02/2000 – 12/2003 and another for the period 11/1994 – 10/2013. One of the main contentions taken by the appellant is that the respondent cannot levy damages from 11/1994 and the claim shall be limited to five years prior to the date of the claim. There is no statutory backing for this claim. Sec 14B of EPF and MP Act provides for no limitations. Another contention taken by the appellant is that the respondent calculated damages for a particular month more than once. From the statement attached to Annexure 2, it can be seen that the chalan reference number is different for the repeated months. For example, for the month of 02/2011, the two entries are with respect to the chalan Ref. Nos. 130301891000092 and 201104190000053 by which amount of Rs.20,177/- and Rs. 3,766/- were paid by the appellant on 08.03.2013 and 22.03.2011 respectively. Similarly

each repeated entry is with respect to different chalan reference number or different payments by the appellant. Hence the amount of damages calculated is correct and not imaginary as claimed by the appellant. The respondent authority considered all the relevant facts before issuing the impugned order. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1979 Lab IC 1261 held that "There is nothing in the Section to show that damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme". The respondent authority considered all the relevant facts. He decided not to levy damages for the delayed remittance made for 11/2011 as damages have already been levied on this remittance.

4. The learned Counsel for the appellant pointed out some irregularities in the notices issued by the respondent authority for assessing damages. The learned Counsel for the respondent on the other side explained the mistakes and pointed out that the damages are levied for belated remittance of contribution for the period from 02/2000 – 12/2003 and 11/1994 – 10/2013. There is no dispute regarding the fact that

there was delay in remittance of provident fund contribution during the above period. The respondent authority therefore issued notices along with delay statement which is produced and marked as Annexure 2. The appellant was also given an opportunity for personnel hearing. A representative of the appellant attended the hearing and filed Annexure 3 written statement in which the appellant had taken up certain issues. It is seen that the respondent authority answered all issues raised by the appellant in the impugned order.

5. One of the ground taken by the appellant is that of limitation. It is a settled legal position that there is no limitation in initiating proceedings under Sec 14B of the Act. The Hon'ble Supreme Court of India in ***Hindustan Times Ltd. Vs Union Of India***, 1998 (1) LLJ 682, ***RPFC Vs KT Rolling Mills Pvt. Ltd.***, 1995 AIR SC 943 and ***M/s. K Streetlite Electric Corporation Vs RPFC***, 2001(4) SCC 449 categorically held that there is no limitation as far as Sec 14B are concerned . It is also clarified that if at all there is any delay, the employers are benefited by the same. The learned Counsel for the appellant also pointed out that the contribution in respect of contract employees were

assessed under Sec 7A of the Act and the damages if any, shall be calculated from the 15th day of finalisation of Sec 7A order. There is no statutory basis for such a claim as the respondent is liable to pay interest from the due date. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union Of India** (supra) has categorically mentioned that Para 38 of EPF Scheme mandates that the deposit of contribution shall be made by the employer within 15 days of close of every month, that is, a contribution for a particular month has got to be deposited by the 15th day of month following. A breach of the above requirement is made a penal offence. The above decision of the Hon'ble Supreme Court was also followed by the Hon'ble High Court of Kerala in **Jewel Homes Pvt. Ltd. Vs EPFO and another**, W.P.(C) No. 25884/2011. The learned Counsel for the appellant also raised an issue regarding the variation in dates between the dates shown in the penal damages statement and that available in the records of the appellant. It is seen that the respondent authority during the course of hearing under Sec 14B directed the representative of the appellant to file a detailed statement showing the due months, date of payment/presentation of instrument in the bank and the amount involved

within 15 days. The appellant failed to file any such statements and it is therefore taken that there is no such discrepancy as claimed by the appellant. It is seen from the impugned order that the respondent authority has excluded the delayed remittance for the period from 11/2011 – 01/2013 from the assessment as the damages had already been levied for the said period.

6. The learned Counsel for the appellant also took a plea of lack of mensrea in belated remittance of contribution. The Hon'ble Supreme Court of India in ***Horticulture Experiment Station, Gonikoppal, Coorg Vs Regional Provident Fund Organisation***, Civil Appeal No. 2136/2012 examined the issue of mensrea in Sec 14B proceedings. After considering its earlier decisions in ***McLeod Russell India Ltd. Vs Regional Provident Fund Commissioner***, 2014(15) SCC 263 and ***Assistant Provident Fund Commissioner Vs Management of RSL Textiles India Pvt. Ltd.***, 2017(3) SCC 110 the Hon'ble Supreme Court held that

*“Para 17. Taking note of the three Judge Bench Judgement of this court in **Union Of India and others***

Vs Dharmendra Textile Processors and Others (Supra) which is indeed binding on us, we are of the considered view that any default or delay in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Sec 14B of the Act 1952 and mensrea or actusreus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities”

The above judgement of the Hon’ble Supreme Court finally settled the question whether the intention of parties in delayed remittance of provident fund contribution is relevant while deciding the quantum of damages under Sec 14B of the Act.

7. Considering all the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer