



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Thursday the 30th day of September 2021)

APPEAL No.777/2019

Appellant

M/s. Muthoot Pappachan Consultancy
& Management Services
7C, 14/2074, Muthoot Centre
Punnen Road,
Trivandrum - 695034

By Adv. C M Stephen

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Pattom, Trivandrum – 695 004

By Adv. Ajoy P B

This case coming up for final hearing on 26/04/2021
and this Tribunal-cum-Labour Court on 30/09/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/ TVM/ 16159/
Damages/2019–20/3479 dated 24/09/2019 assessing
damages under Section 14B of EPF and MP Act (hereinafter
referred to as ‘the Act’) for belated remittance of contribution

for the months 2/2017 and 08/2017 to 12/2018. Total damages assessed is Rs.18,76,733/- (Eighteen lakh seventy six thousand seven hundred and thirty three only)

2. The appellant is a firm registered under Indian Partnership Act 1932. The appellant is regular in compliance and the allegation otherwise is in contravention of the factual position. The appellant was not in receipt of the notice dated 06/05/2019. He received a summons cum notice dated 01/04/2019 but the period was different. A true copy of the notice dated 01/04/2019 is produced and marked as **Annexure A2**. The appellant was not aware of the proceedings of enquiry conducted as per the notice dated 06/05/2019 which was never issued to the appellant. Hence the enquiry conducted by the respondent was clearly in violation of the principles of natural justice. The respondent authority could have brought the documents to the notice of the appellant before issuing the impugned order. The allegation that the respondent authority conducted 18 sittings is immaterial and irrelevant. After computerisation of the respondent organisation, the appellant had difficulty in entering member

details such as Adhaar card and PAN card details in the system. The delay in remittance was due to the extra time taken for entering the details of the employees into the new system. The appellant was represented in the proceedings before the respondent authority as per Annexure A2 notice. In the written statement filed on behalf of the appellant, it was clearly stated that the contributions were remitted in time. However the delay, if any, was due to the delay in entering the employee's names in the new system. There was no delay in remittance of contribution. The **Annexure A3** series of bank statement would prove the same. The appellant have financial difficulty due to the fact that the bank accounts were attached by the respondent authority. A copy of the attachment notice received by the appellant is produced and marked as **Annexure A4** series. The impugned order is liable to be set aside for not considering the mitigating circumstance of the appellant establishment.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant failed to pay the

statutory dues in time for the months 02/2017 and 08/2017 to 12/2018. The delay in remittance attracts damages under Section 14B of the Act read with para 32A of EPF Scheme. The respondent issued notice dated 06/05/2019 advising the appellant to attend hearing scheduled on 24/05/2019. There was no representation from the appellant. Hence the enquiry was adjourned to 25/06/2019. An Advocate attended the hearing and filed an application for adjournment which was allowed and the hearing was adjourned to 08/07/2019. On 08/07/2019 none appeared and hearing was adjourned to 24/07/2019. On 24/7/2019, a junior Counsel representing Adv. C M Stephen attended the hearing, filed the vakkalath and requested for adjournment. The request was allowed and the matter was posted to 08/08/2019. On 08/08/2019 Adv. Surjith S N appeared and filed a written statement contenting that the remittance of statutory dues in respect of some employees was delayed as their Adhaar card and PAN card details had to be collected and uploaded. The Counsel for the appellant also contended that the date of remittance in the delay statement furnished along with the notice was not correct. The appellant was therefore allowed to produce a

copy of the bank statement to confirm the date of debit of the amount from their bank account. The bank statement was not produced on the next day of hearing and appellant sought further time to produce the same. The hearing was therefore adjourned to 05/09/2019. None appeared on 05/09/2019, even though it was the 8th opportunity given to the appellant by the respondent authority. Hence the respondent authority assessed the damages on the basis of the documents made available to him at the time of enquiry. The appellant establishment was issued with a notice number KR / TVM / 0016159 / 000 / ENF 501 / Damages / 673 dated 06/05/2019 which was acknowledged by the appellant. Copies of the notice and acknowledgement card are produced as Annexure R1. The notice issued by the Recovery Officer, Annexure A2, is for a different period and different purpose and has no relevance to the present procedure. The proceedings initiated by the Recovery Officer is for entirely different period and purpose. As already stated, the notice of enquiry was served on the appellant and the acknowledgement card is produced as Annexure R1.

4. The respondent organisation is under a statutory obligation to pay interest to the subscribers to the fund at the rates declared by the Government of India from time to time irrespective of the fact whether the employer has remitted the contribution under Section 6 of the Act in time or not. It is also a fact that due to the delay in payment of contribution by the employer, the fund suffers loss of interest by not being able to invest the moneys in time. The appellant establishment has no case that salary of the employees were not paid in time. The delay in depositing the employee's share of contribution will clearly prove the mensrea of the appellant establishment. Further in **Chairman, SEBI Vs Sriram Mutual Fund, civil appeal No.9523-9524/2003** the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention for provision of civil Act. Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and regulation is established and hence the intension of party's committing such violation become wholly irrelevant.

5. The appeal was admitted by this tribunal on 26/02/2020 after hearing both the Councils. Thereafter though the appeal was posted on various dates, there was no representation on the side of the appellant. The appellant was also given an opportunity to file argument note within three weeks from 26/04/2021. The appellant failed to file an argument note. Hence the respondent was heard and matter was taken for final orders.

6. It is seen that the contention of the appellant in this appeal is basically on procedural lapses and not on merits of the cases. It is the case of the appellant that the appellant establishment never received the summons along with the delay statement send by the respondent. The respondent, therefore, produced Exbt R1 to prove that the summons and delay statements was received by the appellant and acknowledged by him. Another contention taken by the appellant is that he never appeared before the respondent authority in this proceedings. He appeared before the respondent in another proceedings in response to Annexure A2 summons. But never attended the hearing in this 14B

proceedings. It is unfair on the part of the appellant to take such a stand in the appeal after having attended the proceedings on various dates through its Advocates and also filing written statement in the proceedings. A perusal of the impugned order would clearly show that the enquiry was posted on various dates and the Counsels for the appellant attended the hearing on many of these dates. Hence the contention of the appellant that he was not in receipt of the notice and also he never attended the proceedings is patently incorrect. Further it is seen that these procedure under Section 14B was conducted by the Regional Provident Fund commissioner whereas the proceedings by the Recovering Officer as per the Annexure A2 notice is conducted by the Asst. Commissioner and Recovery Officer and there cannot be any bonafide confusion regarding these two procedures. The only ground taken by the appellant for the delay is that the delay in remittance was caused due to delay in collecting the details such as Adhaar card and PAN from few of the employees. It is seen from the delay statement that the delay in remittance of contribution is so huge that the explanation offered by the appellant cannot justify the kind of delay that

occurred in remittance of contribution for the relevant point of time. Though the appellant also pleaded financial difficulties, no document to support the same was produced by the appellant before the respondent authority in this appeal. The learned Counsel for the respondent argued that the appellant has no case that the salary to the employees' were delayed during the relevant period. When the salary of the employees' was paid, the employees' share of contribution which accounts for 50% of the total contribution is also deducted from the salary of the employees. According to the learned Counsel for the respondent, the appellant failed to remit even the employees' share of contribution deducted from the salary of employees' in time. Non remittance of employee's share of Provident Fund contribution deducted from the salary of employees' is an offence of breach of trust under Section 405/406 of Indian Penal Code. Having committed an offence of breach of trust, the appellant cannot plead that there is no mensrea or intentional delay in remittance of atleast 50% of the total contribution.

7. Considering 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