



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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer
(Monday the 4th day of October 2021)

APPEAL No.779/2019

Appellant

M/s Enjayees Spices and
Chemical Oils (P) Ltd.
Spice Hill, Vallicode
Pathanamthitta – 689 656

By Adv. C M Stephen

Respondent

The Assistant PF Commissioner
EPFO, 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 04/10/2021 passed
the following:

ORDER

Present appeal is filed from order No. KR/TVM/10903/
Damages Cell/2019-20/3129 dated 02/09/2019 assessing
damages under Sec 14B of EPF and MP Act (hereinafter
referred to as ‘the Act’) for belated remittance of contribution

for the period 09/2014 – 01/2019. Total damages assessed is Rs.2,54,637 (Rupees Two Lakhs Fifty four thousand six hundred and thirty seven only)

2. The appellant establishment is covered under the provisions of the Act. The appellant was prompt in remittance. In spite of this, appellant was issued with a proceedings dated 02/09/2019 imposing penal damages alleging delay in remittance of contribution. The impugned order is produced and marked as Annexure A1. The payments were all made in time and copies of the challan receipts evidencing payment of contribution is produced and marked as Annexure A2 Series. The respondent did not conduct any inspection before issuing the impugned order. The impugned order was issued without any basis as no evidence was produced by the enforcement department. The claim of the respondent that a notice was issued to the appellant is not correct. A copy of the notice dated 10/06/2019 is produced and marked as Annexure A3. The appellant did not attend the enquiry on 16/07/2019 as the Annexure A3 notice was received by him on 26/07/2019. The appellant appeared in the enquiry on 14/08/2019 and the

enquiry was closed on the same day without providing the appellant an opportunity to produce evidence. The alleged delay of 1487 days in remittance is without any basis. The impugned order was issued in violation of principles of natural justice. The appellant was not given adequate opportunity to adduce evidence. The respondent authority has not considered the financial position of the appellant establishment before issuing the impugned order. The appellant was not provided the documents on the basis of which the respondent arrived at the conclusion that there was delay in remittance of contribution. There was no opportunity for the appellant to cross examine the Enforcement Officer or other witnesses. The respondent authority has not considered the number of defaults, period of delay and frequency of defaults before issuing the impugned orders. The respondent authority also failed to consider the mitigating circumstances which lead to the delay in remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment delayed / defaulted remittance of contribution for a period from 09/2014 –

01/2019. The delayed remittance of contribution will attract damages under Sec 14B of the Act read with para 32A of EPF Scheme. The respondent therefore issued a notice dated 10/06/2019 along with a delay statement directing the appellant to appear for personnel hearing on 16/07/2019. The appellant acknowledged the receipt of the summons. However, none appeared for the hearing on the said date. The hearing was adjourned to 14/08/2019. On 14/08/2019, Smt. Winnie Sabu attended the hearing with authorisation from the appellant. The representative of the appellant admitted the receipt of the notice and also the delay statement. The delay statement included the details of delayed payment including the due date of remittance, the actual date of payment, the number of days by which the payment was delayed and also the proposed damages and interest. The delay was upto 1487 days. Since the appellant did not raise any objection to the delay statement or sought any adjournment, the respondent authority concluded the enquiry. The notice issued to the appellant was acknowledged by him and on the next date of hearing a representative of the appellant attended the hearing with authorisation. The

representative of the appellant did not raise any dispute regarding delay in remittance of contribution. It is very clear that it is only a delaying tactics by the appellant to delay the payment of damages. The Annexure A2 series of documents produced by the appellant would clearly prove the delay in remittance of contribution for the period 09/2014 – 01/2019. The impugned order is a speaking order after providing adequate opportunity to the appellant. Since the appellant did not raise any dispute, the respondent authority issued the impugned order.

4. The pleadings in this appeal are full of contradictions. On one side the appellant pleads that he was not in receipt of the notice. At the same time it is proved by respondent that the appellant attended the hearing on the next date of hearing and did not raise any objection regarding the delay statement. The appellant pleaded that they were not in receipt of the notice dated 10/06/2019, however produced a copy of the same as Annexure A3 alleging that it is received only on 26/07/2019. The appellant had no such case before the respondent authority as the notice was already

acknowledged. The appellant further pleads that there was no delay in remittance of contribution and produced Annexure A2 series of challans to substantiate the same. However on a random perusal of the challans, it is clear that there is undue delay in remittance of provident fund contribution. For example, the dues for the wage month of September 2014 was actually remitted on 25/10/2018. The dues for the wage month October 2014 was remitted on 12/11/2018. The contribution for the wage month December 2014 is actually paid on 10/11/2018 and so on. The Annexure A2 Series of challans and documents produced by the appellant fully supports and substantiates the delay in remittance of contribution. However according to the appellant, there is no delay in remittance of contribution. According to the learned Counsel to the respondent, this appeal is filed only to delay the remittance of damages. A perusal of the Annexure A3 notice and delay statement, it is clear that there is undue delay in remittance of contribution and the appellant failed to offer any explanation for such delay as rightly pointed out by the learned Counsel of the respondent. The delay in remittance is upto 1487 days and in the absence of any proper

explanation on the part of the appellant, it is not possible to accept the pleadings of the appellant that there was no delay in remittance of contribution. Though the appellant pleaded that the respondent failed to consider any of the mitigating circumstances of the appellant, it is seen that no mitigating circumstances is pleaded or proved before the respondent authority. According to the learned Counsel for the respondent in the absence of any explanation for the delay, it can only be taken as an intentional delay in remittance of Provident Fund contribution. The learned Counsel for the respondent also pointed out that in the absence of any pleading for delayed payment of wages, it can only be presumed that wages were paid in time and the employees' share of contribution is deducted from the salary of the employee. The appellant failed to remit employees' share of contribution deducted from the salary of the employees' also in time. Therefore the appellant cannot claim that there was no mensrea in belated remittance of contribution.

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

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer