



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Tuesday the 9th day of November 2021)

APPEAL No.784/2019

Appellant : M/s. VEP Technologies (P) Limited
TC 15/1440,
1st Floor, TKD Road
Samson & Sons Buildings,
Muttada (PO),
Trivandrum - 695025

By Adv. Anil Narayanan

Respondent : The AssistantPFCommissioner
EPFO,Sub Regional Office
Pattom, Trivandrum – 695 004

By Adv. Nita N S

This case coming up for final hearing on 02.08.2021 and this Tribunal-cum-Labour Court on 09.11.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/TVM/26284/Damages Cell/2019 – 2020/2769 dated 20.08.2019 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 – 07/2017. Total damages assessed is Rs.1,78,202/- (Rupees One lakh seventy eight thousand two hundred and two only).

2. The appellant is a Private Limited Company engaged in the business of Software Development and related works. The appellant received a summons dated 18.06.2019 directing to show cause why damages under Sec 14B of the Act shall not be levied for belated remittance of contribution. A copy of the summons is produced and marked as Exbt. A1. A representative of the appellant attended the hearing and pointed out the financial difficulty being faced by the appellant during the relevant point of time. Further short remittance of contribution occurred consequent on raising of the scaling of wages for EPF coverage from Rs.6500/- to Rs.15000/- from September 2014. By the time the appellant came to know about the enhancement, many of the beneficiary employees left the appellant company. The appellant remitted the contribution on higher wage as per the order issued by the respondent authority under Sec 7A of the Act. The delay in

remittance was not wilful and delay occurred only due to the circumstances explained above. The appellant company was in real financial constraints during the relevant point of time. The loss for the year 2014-15 was Rs.13.18/- lakhs and during 2015-2016 it was Rs.43.55/- lakhs and during 2016 - 2017 the loss was Rs.6.61 lakh/-. The Balance Sheet and Profit and Loss account of the appellant company for the relevant period from 2014 - 2015 to 2016 - 2017 are produced and marked as Exbt.A2 to A4. The respondent authority failed to distinguish the purpose and object of imposing damages and acted in a mechanical manner. Sec 14B, as it stands now is only a penal provision and is only punitive in nature. The respondent authority ought to have followed the principles laid down by the Hon'ble Supreme Court in ***M/s. Hindustan Steel Ltd. Vs The State of Orissa***, AIR 1970 SC 253. The respondent can levy damages only if there was intentional delay as per the various decisions of the Hon'ble High Court and also Hon'ble Supreme Court. Therefore the respondent ought to have looked into the question as to whether there was conscious failure as to the part of the company in non-payment of contribution in time. Without

considering the special circumstance in this case, the respondent authority issued the impugned order.

3. Respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant failed to remit in time the contribution for the period from 09/2014 – 07/2017. Hence a notice was issued to the appellant under Sec 14B of the Act to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personnel hearing on 25.07.2019. A representative of the appellant attended the hearing and requested for waiver of damages. The respondent authority found that the delay in remittance was upto a maximum of 1522 days and the defaulted amount included employees share of contribution deducted and retained illegally by the appellant establishment. Provident Fund and other contributions have to be deposited by the appellant by the 15th of the month following the month in which the employee has worked and dues become payable. Therefore, any delay in remittance will attract damages under Sec 14B of the Act. The

claim of the appellant that there is no loss to be compensated by way of damages is wrong. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs UOI**, 1979 AIR (SC) 1803 held that "The scheme of the Act is that each employer and employee in every establishment falling within the Act do contribute into a statutory fund. This social security measure is a human homage the state pays under Article 39 to 41 of the Constitution. The viability of the project depends on the employer duly deducting the workers contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function". The averment of the appellant that there was no deliberate default is not correct. The appellant defaulted in the remittance of contribution even after deducting the employees' share of contribution from the salary of the employees. The Hon'ble Supreme Court of India in **Chairman SEBI Vs Sriram Mutual Fund**, Civil Appeal No. 9523-9524/2003 held that "mensrea is not an essential ingredient for contravention of provisions of civil Act."

4. Admittedly there was delay in remittance of provident fund contribution, which attracts damages under Sec 14B of the Act read with Para 32A of the Scheme. The respondent therefore initiated action for levy of damages, issued summons along with a delay statement which is produced as Annexure A1 and gave an opportunity to the appellant to explain the cause of delay. After taking into account the submissions made by the appellant, the respondent issued the impugned order. The respondent authority found that the delay in remittance of contribution was upto 1522 days and therefore the appellant do not deserve any sympathy in assessment of damages. The learned Counsel for the appellant during these proceedings raised two issues. According to the learned Counsel for the appellant the appellant establishment was not aware of the enhancement of salary limit from Rs.6500/- to Rs.15000/- and therefore continued deduction and payment of contribution on statutory limit of Rs.6500/- even beyond 09/2014. The respondent authority initiated an enquiry under Sec 7A, quantified the dues and the appellant remitted the same. In the meanwhile many of the beneficiary employees left the appellant

establishment and therefore appellant establishment was forced to remit both the contributions. The learned Counsel for the respondent argued that the enhancement of salary limit w.e.f. 09/2014 was given wide publicity by Government of India, Employees Provident Fund Organisation and the respondents' office. Therefore the claim of the appellant that they were not aware of the enhancement of the salary ceiling limit cannot be accepted. According to learned Counsel, it was a deliberate attempt on the part of the appellant to extend the benefit only on the earlier statutory limit, since the appellant is the ultimate beneficiary of the same.

5. The second ground pleaded by the appellant establishment is that of financial difficulty. According to the learned Counsel for the respondent, the appellant failed to produce any documents before the respondent authority to substantiate the claim of financial difficulty. In this appeal, the appellant produced Exbt. A2 to A4 balance sheets for the year ending March 2015, 2016 and 2017 to substantiate their claim. The learned Counsel for the respondent argued that the balance sheet now produced by the appellant cannot be

accepted as the same is not proved through a competent witness before the respondent authority. The Hon'ble Supreme Court of India in ***Aluminium Corporation Vs Their workmen and Others***, 1963 2LLJ 629 SC held that the mere statements in balance sheet as regards current assets and current liability cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses.

6. The learned Counsel for the respondent also pointed out that the appellant is liable to be prosecuted for breach of trust as the appellant failed to remit even the employees share of contribution deducted from the salary of the employees. I am unable to agree with the claim of the learned Counsel in this regard. The case of the appellant is that the respondent continued remitting contribution at the statutory limit of Rs.6500/- even after its enhancement to Rs.15,000/- in September 2014. That being the case, the claim of the respondent can be accepted only if there is evidence to support his case that the appellant establishment

was deducting employees' contribution on the statutory sealing of Rs.15000/- during the relevant period.

7. Though there is a point in the argument of the learned Counsel for the respondent that the figures in balance sheets cannot be accepted unless the correctness of the same is proved, the documents now produced would definitely indicate that the appellant establishment was under loss during the relevant period of time. Hence the delay in remitting the contribution can to a certain extent be attributed to the financial constraints of the appellant establishment.

8. 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 70% of the damages assessed under Sec 14B of the Act.

9. Hence the appeal is partially allowed, the impugned order is modified and appellant is directed to remit 70% of the damages assessed under Sec 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer