



सत्यमेव जयते

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

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

(Tuesday the 4<sup>th</sup> day of January, 2022)

**APPEAL No.302/2019**

Appellant : M/s.Modern Distropolis Limited  
A.P.IX/788, Modern Industrial Complex  
Cheppur, Anakkayam P.O.  
Malappuram - 676121

By Adv.Babu S. Nair

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Eranjipalam P.O.  
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 21.09.2021 and this Industrial Tribunal-cum-Labour Court on 04.01.2022 passed the following:

**ORDER**

Present appeal is filed against order no.KR/KK/1494811/ENF-3(4)/14B/2019/1991 dt.26.06.2019 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of provident

fund contribution for the period from 01.09.2014 to 30.04.2019. The total damages assessed is Rs.9,21,613/-.

2. The appellant is a company incorporated under the provisions of Companies Act, 1956. On 09.01.2014 the employment strength of the appellant company exceeded 20 and in March 2016 the appellant requested for allotment of a code number. The appellant itself came forward declaring that its employment strength crossed 20 and the appellant was willing to pay the entire dues. The list of employees was also furnished at the time of applying for coverage. The payment are to be made by company through EPF Website online. The company was allotted a code number on 14.07.2016. However separate identification numbers were not given to the employees. Without identification numbers, it was not possible to make payments. Individual identification numbers were allotted in the month of February 2018 and the appellant remitted the contribution on 23.02.2018. There was no fault on the part of the appellant however the respondent initiated action for assessing damages U/s 14B of the Act. A representative of the appellant appeared before the respondent and explained the delay in remittance of contribution. Ignoring the contentions of the appellant the respondent issued the impugned order which is produced and marked as Annexure A. There was no delay or

default on the part of the appellant and the delay in remittance only due to the delayed allotment of individual numbers to the employees by the respondent.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. The appellant delayed the remittance of contribution for the period from 01.09.2014 to 30.04.2019. Accordingly a show cause notice was issued to the appellant U/s 14B of the Act to explain the belated remittance of contribution. A detailed statement showing the delay in month wise remittance of dues was also forwarded to the appellant. The Managing Director attended the hearing on 13.06.2019. He admitted the delay. He also pleaded for waiver of damages. The appellant establishment is liable to remit contribution within 15 days of close of the month. Identification numbers of the employees are generated automatically through the system by the employer himself through the EPFO portal of the employer. Hence the question of allotting identification numbers by the respondent organisation does not arise. Even if the identification numbers are not allotted to the employees as alleged by the appellant, there is no prohibition in remitting the contributions within the stipulated time. The impugned order was issued after providing adequate opportunity to the appellant. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 the Division Bench of the Hon'ble High Court of Kerala held that the

employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact whether wages have been paid or not.

4. The appellant filed a rejoinder confirming the pleadings in the appeal memo.

5. The appellant establishment satisfied the requirements of coverage on 09.01.2014 when the employment strength of the appellant exceeded 20. The appellant establishment did not start compliance. The appellant establishment in the month of March 2016 made a request to the respondent to cover the establishment w.e.f. 01/2014. According to the learned Counsel for the appellant, the respondent organisation allotted a code number on 14.07.2016. However the individual code numbers were allotted only during 02/2018. The learned Counsel for the appellant therefore submitted that the delay in remittance of contribution was only due to the delayed allotment of individual code numbers and the entire contribution from 01/2014 was remitted on 23.02.2018. The learned Counsel for the respondent submitted that the appellant was liable to extend social security benefits to its employees from 01/2014 but approached the respondent organisation only in March 2016. There was delay of more than 2 years in requesting for allotment of code number. The learned Counsel also pointed out that code number to individual employees are generated automatically through the system by the appellant

himself through the EPFO portal of the employer. The respondent has no say or involvement in allotting individual numbers and the claim of the appellant that the respondent delayed the allotment of individual numbers to its employees has no basis.

6. As rightly pointed out by the learned Counsel for the respondent, the appellant establishment is liable to remit contribution in respect of its employees once the statutory requirements are met by the appellant establishment. Admittedly the appellant establishment satisfied the statutory requirements on 09.01.2014 as the employment strength of the appellant establishment exceeded 20. However the appellant failed to start compliance. In March 2016 after more than two years the appellant approached the respondent with a request of allotment of code number. The respondent allotted a code number with effect from 2014. However the appellant started compliance by remitting the contribution only on 23.02.2018. The claim of the appellant that the delay in remittance was due to delayed allotment of individual code number is only an excuse for delayed remittance of contribution. It is clarified by the learned Counsel for the respondent that the allotment of individual numbers will have to be done by the appellant himself through the EPFO portal of the employer. So the appellant cannot claim that the delay in remittance of contribution was due to the delay in allotment of

individual code numbers of the employees by the respondent authority. The delay can be attributed only to the appellant.

7. The learned Counsel for the appellant pointed out that the bonafides of the appellant is proved when the appellant, on his own, approached the respondent with a plea to remit the contribution from 2014 to 03/2016. However there is delay of more than two years in approaching the respondent authority for a registration and there is a further delay of two years in remitting the contribution. Such delay in remittance cannot be held to be unintentional. The Hon'ble Supreme Court of India in **Horticulture Experiment Station Gonikoppal, Coorg Vs RPFC**, Civil Appeal no.2136/2012 after referring to its earlier decisions in **McLeod Russell India Ltd Vs RPFC**, (2014) 15 SCC 263 and **EPFO Vs The Management of RSL Textiles India (P) Ltd**, (2017) 3 SCC 110 held that

“ Para 17. Taking note of three-Judge Bench of this Court in **UOI 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 the payment of EPF contribution by the employer under the Act is a *sine qua non* for the imposing of levy of damages U/s 14B of the Act, 1952 and *mensrea or actus reus* is not

an essential element for imposing penalty/damages for breach of civil obligations and liabilities”.

8. 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