



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer.
(Thursday the 08th day of April, 2021)

APPEAL No.479/2018

Appellant :: M/s. High Range Home Appliances
City Plaza,
Kattappana
Idukki – 685 508

By Adv. Samal Kumar.A.P

Respondent : The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam - 686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on
19.02.2021 and this Tribunal-cum-Labour Court on
08.04.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/
KTM/1573964/ APFC /Penal Damage/14B/2018-19/2125
dt. 23/10/2018 assessing damages U/s 14B of EPF & MP

Act, 1952 (hereinafter referred to as 'the Act'.) for belated remittance of contribution for the period 07/2011 to 08/2017. The total damages assessed is Rs. 2,39,117/-.

2. The appellant is an establishment engaged in the business of home appliances from the year 2009. Due to lack of knowledge of provident fund law some of the employees were not enrolled to provident fund from the due date of the eligibility. The respondent organization notified and Employees' Enrollment Campaign 2017 (EEC 2017). The appellant enrolled 8 employees from 07/2011. This is done inspite of the fact that the appellant was having severe financial crisis. The appellant remitted the entire amount of the provident fund contribution on 28/06/2017 which is before the stipulated date on 30/06/2017 as per the EEC 2017. While uploading 01/2018 ECR, the appellant noticed that certain online challans were generated for the period 2011-2017. The matter was brought to the notice of the respondent vide letter dt. 20/02/2018. A copy of the letter is produced and marked as Annexure A1. The appellant got a summons dt. 21/09/2018 alleging delay in remittance of

contribution. It was alleged in the notice that the appellant remitted contribution for the period from 07/2011 to 03/2018 after due date and the appellant is therefore liable to pay damages U/s 14B of the Act. The respondent also gave an opportunity for personal hearing on 15/10/2018. An authorized representative of the appellant attended the hearing. During the hearing the appellant informed the respondent that it was due to an inadvertent mistake that the proposed damages at the rate of Re.1/- per annum was not remitted along with the contribution. Since the amount was nominal the delay was not intentional. No pecuniary benefits had resulted to the appellant in not making the payment of Re.1/-per annum. The Hon'ble Supreme Court in ***Assistant PF Commissioner Vs Management of RSL Textiles India Ltd***, 2017(3) SCC 110 held that imposition of damages without a finding regarding mensrea/actusreus on the part of the employer is unsustainable. In ***Harrisons Malayalam Ltd Vs RPFC***, 2012(1) KLT SN 74 the Hon'ble High Court of Kerala held that the liability to pay damages

does not arise automatically. It shall be decided by applying mind objectively to merits of each case.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act with effect from 18/07/2011. Employees Enrollment Campaign (EEC) 2017 was an amnesty scheme for EPF defaulters by incorporating Para 82A in Employees' Provident Fund Scheme, 1952, to provide an opportunity to such employers to voluntarily come forward and declare details of all such non-enrolled employees who were entitled for Provident Fund membership between 01/04/2009 to 31/12/2016 but could not be enrolled for any reason. The Scheme was in force between 01/01/2017 to 31/03/2017, and further extended till 30/06/2017. Under Paragraph 82 A(2), the employers are required to furnish a declaration in respect of the employees who are required to or entitled to become the member of the fund. As per Para 82 A(3) an employer is required to remit the employers share of contribution payable in accordance with the provision of this scheme and the employees contribution, if any,

deducted from the salary of the employees along with interest payable U/s 7Q of the Act and damages of Re.1/- per annum within 15 days of furnishing the declaration, for the declaration to be valid. The incentive of the employers' opting to enroll employees under this Scheme included waiver of the employees' share of contribution, if the same is not deducted from the salary of the employees, waiver of the administrative charges and reduction of damages to Re.1/- per annum. As per Paragraph 82A(6), if the employer fails to remit within 15 days of the date of furnishing the declaration, the dues, the interest and damages payable by him in respect of the declaration shall be deemed to have not been made by such employer under the campaign. A true copy of the notification GSR 1190 dt. 30/12/2016 is produced and marked as Annexure R1. A true copy of the Circular dt. 17/01/2017 by the Ministry of Labour to all statutory authorities under the Act is produced and marked as Annexure R5. The scheme was further extended up to 30/06/2017. It is an admitted fact that the appellant failed to comply with the provisions of Para 82A by remitting the

dues, damages @ Re 1/- per annum and 7Q interest within the stipulated period of 15 days from the date of declaration. The appellant submitted his declaration for enrollment on 29/03/2017 and was liable to make payment of contribution, interest and damages within 15 days there from. The appellant was liable to make the payments as per the scheme on or before 13/04/2017. Admittedly the appellant failed to remit the contribution in time and is therefore not eligible to claim any relief under the EEC 2017 Scheme. The appellant was liable to pay the contribution, damages and interest on or before 13/04/2017 and he remitted the contribution on 28/06/2017 and failed to pay the damages and therefore lost the benefits of the EEC Scheme. There is no ambiguity in the scheme.

4. The Government of India Ministry of labour notified a scheme called Employees Enrollment Campaign 2017 to encourage defaulting employers to enroll the eligible non enrolled employers to the fund from their due date of eligibility. As per the Scheme provisions, the employers are required to file a declaration in the prescribed form.

Within 15 days of filing the declaration the employers are required to remit the employers share of the contribution, the interest U/s 7Q and damages of Re 1/- per annum. The incentives under this Scheme were the waiver of employees share of contribution if the same is not deducted and waiver of administrative charges, and the reduction of damages to Re.1/- per annum. The stipulated condition under the scheme is that these remittance should be made within 15 days of the declaration filed by the employers. As per proviso to Para 82 A(5) “ if the employer fails to remit the contribution, interest and damages payable by him as referred to Sub-Para 3, then, declaration send by the employer under Sub Para 2 shall be deemed have not been made by such employer under this Scheme.” From the above provision it is very clear that an employer to avail the benefits under this scheme shall file a declaration and remit the contribution interest and Re.1/- per annum as damages within 15 days of such declaration. Any failure or delay will disqualify the employer to claim the benefits under the provision of the scheme. In this particular case, the

appellant filed the declaration for enrolling 8 employees on 29/03/2017. To avail the benefits of the scheme, the appellant ought to have remitted the employers share of contribution, interest U/s 7Q and damages @ Re.1/ per annum on or before 13/4/2017. The appellant remitted the contribution on 28/6/2017 and failed to pay the damages as stipulated under the scheme. As per the scheme provisions discussed above the appellant is not eligible to claim any relief under the provisions of the scheme. The learned Counsel for the appellant however submitted that the damages payable was nominal and therefore there was no intentional delay in remitting the same. The learned Counsel for the respondent on the other hand submitted that the appellant even otherwise cannot claim the benefits of the scheme as he failed to remit the contribution also within the stipulated time as per the provisions discussed above. It is clear from the above discussion that the appellant cannot claim any benefit under the scheme because of the delay in remittance of contribution as well as damages. The learned Counsel for the appellant relied on

the decision of the Hon'ble High Court of Kerala in ***EPFO Vs Sree Chithira Thirunal Residential School***, WP (C) No. 14448/2014 to argue that the respondent failed to exercise his discretion in the facts and circumstances of this case. It is not possible to allege any mensrea in belated remittance of contribution as the appellant was only trying to enroll some non enrolled employees and to avail the benefits of this scheme. According to the learned Counsel for the respondent, non-enrollment of 8 employees from due date of eligibility itself is an offence under the Act and the appellant cannot claim that there is no mensrea in intentional delay in remittance of contribution. However it is not fit case to levy damages at the maximum slab.

6. Considering the facts, circumstances, pleadings and evidence in this appeal I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

Hence the appeal is partially allowed, the impugned order is set aside. The impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer