सत्यमेव जयते

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

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

(Monday the 21st day of March, 2022

APPEAL No.393/2019

(Old No. ATA 1454(7)/2015)

Appellant	M/s. US Technology International Pvt. Ltd, 721, Nila, Technopark, Thiruvananthapuram- 695 581.
	By Adv. Saji Varghese
Respondent	The Assistant PF Commissioner EPFO, Regional Office, Pattom Thiruvananthapuram- 695 004.
	By Adv. Ajoy P.B.

This case coming up for final hearing on 22/12/2021 and this Tribunal-cum-Labour Court on 21/03/2022 passed the following:

O R D E R

Present appeal is filed from notice No. KR / 16503 / RO / TVM / PD / 2014 / 3407 dt. 12/08/2015 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) for belated remittance of contribution for the period from

01/2003 to 06/2011. The total damages assessed is Rs.43,91,689/-.

2. Appellant is a company incorporated under Companies' Act and engaged in IT Services. The appellant is covered under the provisions of the Act. The appellant company enrolled all the employees except excluded employees from the year 2000. There was regular inspection by the authorities from the respondent organization. The employees who had wages over the ceiling limit of Rs. 6500/- were treated as excluded employees. The excluded employees included those who joined as beginners and those who have earlier joined some other establishments but later joined the appellant company. Due to lack of knowledge of the provisions of the scheme, the employees who had joined the appellant company and who were having provident fund membership were not enrolled to the fund. There was no deliberate intention or contumacious conduct or mensrea in not remitting the contribution of such employees. The respondent authority also did not point out this to the appellant. In 2011 for the first time the provident fund authority pointed out that such employees are required to be enrolled to provident fund membership. The appellant remitted an amount of

Rs.1,08,46,091/- as assessed U/s 7A of the Act. The non-payment of contribution in this case was only a bonafide mistake. The respondent also levied interest U/s 7Q of the Act. A true copy of the notice is produced and marked as Annexure A1. The appellant filed reply to the said notice stating the reasons for delay in remitting the contribution and also pointed out some mistakes in the statements. A true copy of the reply dt. 28/06/2014 is produced and marked as Annexure A2. The appellant thereafter remitted Rs. 23,77,853/- towards the actual interest due. However the respondent issued the order without adjusting the interest U/s 7Q remitted by the appellant. The respondent issued a fresh notice dt.12/12/2013 proposing to levy interest and damages. True copy of the said notice is produced and marked as Annexure A3. The appellant filed a reply pointing out certain mistake in the statement and the interest already paid by the appellant. A true copy of the letter dt. 23/01/2014 is produced and marked as Annexure A4. The respondent withdrew the demand for interest as the same had already being paid by the appellant. The respondent however issued the impugned order U/s 14B without considering the pleadings of the appellant. There was an excess amount of

Rs.2,81,076/-which was due from the provident fund authorities. The respondent adjusted the above amount towards penalty and issued the impugned order, a copy of which is produced and marked as Annexure A5. The respondent authority failed to notice that there was no willful delay on the part of the appellant and the contribution were remitted immediately after the amount was quantified by the respondent authority. The non-remittance of contribution in respect of certain employees was only a bonafide mistake. The respondent failed to exercise the discretion available to him U/s 14B of the Act. In **V.S Murugan Vs RPFC Chennai,** 2012 LLR 37 the Hon'ble High Court of Madras held that there shall be a specific finding regarding mensrea. The Hon'ble High Court of Madras in **RPFC Vs Shri. Vishalam Chit Funds Ltd,** 2010 (4) LLM 76 also held that there shall be a specific finding with regard to mensrea before quantifying the damages.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. There was delay in remittance of contribution for the period 01/2003 to 06/2011. Hence show cause notice dt.03/12/2013 was issued to the appellant

along with a detailed delay statement giving an opportunity to the appellant to appear before the respondent authority on 24/02/2015. Representative of the appellant attended the hearing and pleaded that the delay in remittance of contribution was a bonafide mistake and therefore the same may be waived. An Enforcement Officer of the respondent organization noticed that large number of employees were not enrolled to provident fund membership. on the plea that they are excluded employees. However it was noticed that many of these employees were provident fund members prior to joining the establishment. Hence the dues were assessed and recovered from the appellant establishment. The proceedings for assessing damages U/s 14B was initiated after recovering the amount. After hearing the appellant the respondent issued the impugned order. Any delay in remitting contribution will attract damages U/s 14B of the Act read with Para 32A of EPF Scheme and the damages assessed in this case is according to law. The damages were assessed after providing the details of delayed remittance and also more than sufficient opportunity to the appellant to represent their case. The question whether the intention or mensrea is

relevant in a proceedings while levying penalty was considered by the Hon'ble Supreme Court in **Chairman, SEBI Vs Sri Ram Mutual Fund,** 2006 (5) SCC 361. The Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provision of the civil Act. The Hon'ble Supreme Court of India in **Organo Chemical Industries Vs Union of India,** 1979 AIR (SC) 1803 held that "The viability of the projects 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".

4. Since there was delay in remittance of contribution for the period from 01/2003 to 06/2011. The respondent initiated action for assessment of damages U/s 14B of the Act. A detailed delay statement was also forwarded to the appellant . The appellant was also given an opportunity for personal hearing. After taking into account the contentions of the appellant the respondent issued the impugned order.

5. In this appeal the learned Counsel for the appellant pointed out that the delay in remittance of contribution in respect

of few employees was due to a bonafide mistake committed by the appellant. According to him, the appellant failed to enroll 396 employees who joined the appellant establishment with a salary beyond the statutory limit and therefore they were considered to be excluded employees. The Enforcement Officer during his inspection and also the respondent authority in a proceedings U/s 7A of the Act directed the appellant to remit contribution to the tune of Rs.1,08,46 091/- for these 396 employees as they were already members of the provident fund and therefore cannot be treated as excluded employees. The appellant remitted the amount in three installments. According to the learned Counsel for the appellant the delay in remittance of contribution as narrated above was not at all deliberate or intentional.

6. The learned Counsel for the respondent pointed out that when there is delay in remittance of contribution the appellant is liable to pay damages as stipulated under Para 32A of the Scheme. The appellant establishment violated the provisions of Act and Scheme by not enrolling large number of employees which cannot be considered as a bonafide mistake.

7. The issue involved in this appeal is regarding the liability of the appellant establishment U/s 14B for belated remittance of contribution in respect of 396 employees who are not enrolled to the fund by the appellant on the belief that they are excluded employees, since the salary of these employees were beyond the statutory limit at the time they joined the appellant organization. The appellant establishment was not extending the social security benefits to all new employees who are drawing salary beyond the statutory limit and therefore the appellant committed the mistake of not enrolling the employees to provident fund membership those who were already members of the fund. According to the learned Counsel for the respondent, the appellant establishment has violated the provisions of the Act and Scheme and hence they cannot claim any benefit of their own violation of the provisions of the statute. It is a well settled principle of common law that wrong doer cannot take advantage of his own wrong. The above principle was accepted by the Hon'ble Supreme Court in **Euroka Forbes Ltd Vs Allahabad Bank,** 2010 (6) SCC 193.

7. The learned Counsel for the appellant further pleaded that the appellant remitted the interest U/s 7Q immediately on

receipt of the communication from the appellant which will clearly show the bonafides of the appellant establishment. The learned Counsel also pointed out that the appellant establishment remitted the contribution in three installments without raising any dispute regarding the assessment U/s 7A of the Act . The learned Counsel for the appellant argued that the delay in remittance was not at all intentional and there is no mensrea in belated remittance of contribution.

8. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act . In **Horticulture Experiment Station Gonikoppal, Coorg Vs Regional PF Organisation,** Civil Appeal No. 2136/2012, the Hon'ble Supreme Court after examining the earlier decisions of court in **Mcleod Russel India Ltd Vs RPFC,** 2014 (15) SCC 263 and **Assistant PF Commissioner Vs The Management of RSL Textiles India (Pvt) Ltd,** 2017 (3) SCC 110 held that

> " Para 17 : Taking note of three Judge Bench judgment of this Court in **Union of india Vs. Dharmendra Textile Processor and others (Supra)** which is indeed binding on us, we are of the considered view that any default or delay

in payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actus reus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities".

9. The appellant establishment cannot escape the liability to pay damages for belated remittance of contribution. However considering the special circumstances of this case, I am inclined to hold that interest of justice will be met, if the appellant is directed to remit 70% of the damages assessed as per impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages.

Sd/-

(V. Vijaya Kumar)
Presiding Officer