



सत्यमेव जयते

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

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

(Thursday the 18th day of November, 2021)

Appeal No.12/2020

Appellant : M/s. Max Value Credits & Investments
Pvt. Ltd, Ceekay Plaza,
Koorkkencherry,
Opp. Metropolitan Hospital,
Thrissur – 680007.

By Adv. C.B. Mukundan

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kaloor , Kochi – 682017

By Adv. Sajeev Kumar K. Gopal

This case coming up for final hearing on 13.08.2021 and this Tribunal-cum-Labour Court on 18.11.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/KCH/1583193/Penal Damages /2019/8605 dt. 18/11/2019 assessing damages U/s 14B of EPF & MP Act (hereinafter

referred as 'the Act') for belated remittance of contribution for the period from 1/4/2017 to 31/3/2019. The total damages assessed is Rs. 19,86,920/-.

2. The appellant is a Private Ltd company engaged in non-banking finance business. Appellant is covered under the provisions of the Act. An Enforcement Officer of the respondent organization inspected the appellant establishment and reported that there were large number of employees who were not enrolled to provident fund. Those employees were not enrolled to the fund on a bonafide belief that the employees drawing a gross salary above Rs.15000/- is not required to be enrolled to the fund. However the respondent authority took a view that only basic and DA will be considered and all the employees drawing basic and DA, less than Rs.15000/- will have to be enrolled to the fund. The respondent issued an order dt. 09/11/2018 U/s 7A of the Act assessing the contribution of Rs.89,81,397/-. A copy of the said order is produced and marked as Annexure A2. The said order was received by the

appellant on 10/11/2018. On 14/11/2018 the appellant made remittance of a substantial part of the assessed dues. The rest of the dues were also paid immediately, thereafter.

3. The appellant received a summons dt. 16/09/2019 from the respondent directing to show cause why damages shall not be levied for belated remittance of provident fund contribution. A true copy of the summons is produced and marked as Annexure A3. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended and explained the circumstances leading to the delayed remittance of contribution and also explained the financial crisis of the appellant establishment. The appellant also produced the balance sheets for the relevant period. As per the balance sheet, the appellant establishment was suffering a loss of Rs.2.1 crores during 2017, Rs. 20.94 crores during 2018 and 19.46 crores during 2019. The appellant also remitted the interest U/s 7Q of the Act. Ignoring the contentions of the appellant the respondent authority issued the impugned order. It

is a settled law that penalty can be imposed only if there is contumacious conduct or willful defiance of law on the part of the employer. The respondent failed to exercise the discretion available to him U/s 14B of the Act. There is no mensrea on the part of the appellant as regards the delay in remittance

4. Respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant failed to remit the contribution for the period from 01/04/2017 to 31/03/2019 in time as stipulated under the Act and Schemes and therefore the appellant is liable to pay damages as provided U/s 14B of the Act. A summons dt. 05/09/2019 was issued to the appellant along with a detailed delay statement showing the delays committed by the appellant in remittance of contribution. An Advocate represented the appellant and filed a written statement. According to the Balance Sheet the appellant establishment was incurring huge financial loss during the relevant period. However no dispute is raised regarding the

delay statement provided to the appellant alongwith the summons. The respondent authority noticed that the delay in remittance was more than 400 days. It is seen from the documents produced that the paid up capital of the appellant is Rs.121.59 crores. The cash and bank balance as on 31/03/2019 was Rs.44.20 crores. The amount shown as deposit was Rs.19.98 crores. The respondent authority also noticed that the increase in networth is 488.98%. The company is having 164 branches and about 1.90 lakhs customers. After analyzing the documents produced by the appellant the respondent authority found that the appellant had incurred loss only on paper as per the balance sheet submitted. However it cannot be treated as facing any financial stringency during the period of default. The respondent authority also found that mensrea is clearly established since the appellant violated Paras 30,36 & 38 (1) of EPF Scheme. The appellant failed to enroll 655 employees for the month of 12/2017 and remitted less contribution for 182 employees whose basic wages and dearness allowance was less

than Rs. 15000/- for the period from 04/2017 to 12/2017. The dues from the appellant was quantified in a proceedings U/s 7A and the same was remitted by the appellant. In **Hindustan Times Ltd Vs Union of India**, AIR 1998 SC 688 the Hon'ble Supreme Court held that bad financial condition is no defense for delayed deposit of contributions. 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 provisions of civil Act. The contention of the appellant that the delay in remittance was unintentional cannot be accepted. Penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation attracts penalty in the nature of fine under the provisions of the Act, whether contravention was made by the defaulter with guilty intention or not.

5. There was delay in deposit of provident fund and related contributions by the appellant. When there is delay in remittance of contribution the appellant is liable to pay damages U/s 14B of the Act. The respondent therefore issued summons to the appellant alongwith a delay statement. The appellant was also given an opportunity for personal hearing. The representative of the appellant who attended the hearing submitted that the delay in remittance was due to the financial constrains of the appellant establishment. It was also contended that there was no mensrea in belated remittance of contribution. The respondent authority examined the Profit and Loss account produced by the representative of the appellant and came to the conclusion that, though there was financial difficulties, the delay in remittance of contribution cannot be attributed to the same. The respondent authority, in fact, analyzed the financial statement of the appellant establishment to arrive at such a conclusion. The respondent authority also

held that mensrea is not relevant when there is violation of provisions of the Act.

6. In this appeal the learned Counsel for the appellant submitted that there was some non-enrollment detected by the respondent against which an enquiry U/s 7A of the Act was initiated. During the course of 7A enquiry it was seen that there were 655 eligible employees not enrolled to the fund. The respondent authority quantified an amount of Rs. 64,30,095/- against those 655 employees. Further it was also seen that 182 employees whose basic wages and DA was less than Rs.15000/- was also not enrolled to the fund. An amount of Rs.25,51,302/- was assessed against those 182 employees. Hence the respondent authority found that there was a total evasion of Rs.89,81,397/-. According to the learned Counsel for the appellant, the appellant establishment received the order U/s 7A on 12/11/2018 and substantial part of the assessed dues were paid on 12/11/2018. According to the learned Counsel for the respondent, non-enrollment of eligible employees is clear

violation of the provisions of the Act and the appellant cannot plead that there was no intentional delay in remitting the contribution. The learned Counsel for the respondent also pointed out that the financial position of the appellant establishment was not that bad warranting delayed remittance of contribution during the relevant point of time. The learned Counsel for the respondent high lightened the findings for the respondent authority in the impugned order in this regard. The argument of the learned Counsel for the appellant regarding mensrea was also opposed by the learned Counsel for the respondent.

7. The Hon'ble Supreme Court of India examined the applicability of mensrea in a proceedings U/s 14B of the Act in a recent decision. 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 that 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 sine qua non for imposition of levy of damages U/s 14B of the Act 1952 and mensrea or actusreus is not an essential ingredient for imposing penalty/damages for breach of civil obligations/liabilities”

8. In this case, the delay in remittance of contribution was not due to the financial difficulties of the appellant . The appellant failed to enroll large number of employees to provident fund membership in clear violation of the provisions

of the Act. The appellant was compelled to enroll them from their date of eligibility, in view of the action taken by the respondent.

9. 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