सत्यमेव जयते

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

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

(Friday the 22nd day of January, 2021)

APPEAL No.180/2019

(Old No. ATA 911(7) 2015)

Appellant	M/s. BPL Ltd., BPL Works Palakkad – 678 007
	By M/s. Menon & Pai
Respondent	The Regional PF Commissioner EPFO, Sub Regional Office Kozhikode -673006
	By Adv.Dr.Abraham P. Meachinkara

This case coming up for final hearing on 29/12/2020 and this Tribunal-cum-Labour Court on 22/01/2021 passed the following:

O R D E R

Present appeal is filed from order No.KR/KK/ 2260-E/Enf-5(2)/2015-2016/4215 Dt. 29/07/2015 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) belated transfer of PF accumulation on cancellation of exemption granted U/s 17 of the Act. The total damages assessed is Rs. 29,68,331/-.

2. The appellant, BPL Ltd, is a company engaged in the manufacture and marketing of medical and consumer electronic products. All the employees were coved under the provision of the Act. But the employees in the Officers Cadre were exempted from the provisions of the Act, U/s 17 of the Act and BPL Ltd Officer's PF Trust was constituted to facilitate the contribution of all the officers. The trust was managed by a Board of Trustees appointed from time to time. There were 51 active members in the trust and their accumulation as on 31/1/2010 was Rs. 4,70,68,795/-. The appellant sought permission for selling the bonds and securities for surrendering the accumulations. The true copy of the letter dt.25/02/2010 is produced and marked as Annexure A1. Based on the letters dt. 16/4/2010 and 23/4/2010 from the respondent, it was decided to enrol all these employees to the statutory fund and to transfer the past accumulation. True copy of the letter dt. 23/04/2010 is produced and marked as Annexure A2. Accordingly, an amount of Rs. 2,43,91,788/- being the past accumulation of 46 active members along with

the interest for delay for the period from 4/2010 to 6/2010 was transferred to the respondent. Subsequently the accumulations of one active and 350 non-active members along with interest amounting to Rs. 4,54,19,571/- was transferred on 16/7/2010. There was a surplus of Rs. 82,51,252/- and same was transferred vide cheque dt. 24/3/2011. Copy of the letter dt. 24/3/2011 is produced and marked as Annexure A3. An amount of Rs.8,87,066/-was paid on 26/6/2014 being interest towards delayed transfer of the excess amount. True copy of the letter dt. 26/6/2014 is produced and marked as Annexure A4. Hence the entire amount lying in the trust was transferred along with interest to the respondent. Subsequently the appellant received a notice demanding 31,03,125/- towards damages in view of the delay in transfer past accumulation and Rs. 3,87,645/- towards interest. The true copy of the notice dt. 19/5/2015 is produced and marked as Annexure A5. The appellant filed a detailed statement explaining that the company was running under loss and the accumulated loss as on 31/3/2011 was 216.86 crores and the accumulated loss as on 31/3/2015 is Rs. 208.26 crores. Cancellation of relaxation issued under EPF Scheme was communicated vide department letter dt. 16/4/2010 and the direction to take steps to transfer past accumulation as on 31/3/2010 was made vide department letter dt. 23/4/2010. The delay in transfer was also due to the fact that it took sometime to encash bonds and securities and immediately after en-cashing the securities the transfer was made on 25/6/2010 and 16/7/2010. The bonds and securities were earning interest till the date of encashment, hence there is no loss to the members. Even then interest on accumulation was also transferred to the respondent. There was an excess amount of 82,51,252/- after crediting the active and non active members . This is because of the investments made by the trust over the years and were earning more interest than the amount of interest which was being credited to the members respective accounts. This amount is not an accumulation to the credit of the members. Hence the provision of Sec 14B and Clause 5 of Sec 17 are not attracted. True copies of statement dt. 24/6/2015 is produced and marked as Annexure A6. The respondent while passing the order treated the transfer as delayed payment of contribution whereas it was only transfer of accumulation from exempted trust to EPF organization. The respondent ought to have noticed that the appellant took immediate action for selling the bonds and securities on cancellation of exemption. Annexure A3 would shown that an amount of Rs.6,98,11,359/- was transferred immediately after selling the bonds and securities. Annexure A7 order itself would show the transfer was effected on the basis of mutual consultation. The respondent would not have been benefitted in any manner if the securities were transferred. The respondent ought to have considered that Sec 14B was not applicable to the transfer of funds on cancellation of exemption.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act. A section of employees of the appellant establish had been complying under the provision of the Act in " BPL Ltd Officer Provident Fund Trust." With effect from 31/3/2010 the relaxation order issued by the respondent for complying as exempted establishment was withdrawn and from 1/4/2010 those employees were also directed to comply in the statutory fund. The appellant was not complying with the conditions of exemption and the process to withdraw

relaxation granted to the appellant started in August 2009 by issuing a show cause notice. It is evident from letter dt.25/2/2010 produced by the appellant that withdrawal of relaxation was made after mutual consultation and the appellant was required to surrender total investment amounting of Rs. 7.6.crores prior to the cancellation of exemption. After prolonged discussion and the cancellation of relaxation w.e.f 31/3/2010 and the communication to that effect was issued on 16/4/2010. The entire amount of past accumulation was lying in the trust account and therefore the transfer of the same to the respondent is in no way connected with the financial constraints of the appellant establishment. Sub Sec 5 of Sec 17 deals with the transfer of past accumulation together with any amount lying with the trust within the time limit. The delay in transfer will attract damages U/s 14B of the Act. As per Para 28 (1)(ii) total accumulation standing to the credit of the subscribers should be transferred within 10 days of cancellation of exemption in case of liquid cash in the bank and within 30 days in case of securities. Hence the delay is calculated and damages levied as per Para 32A of this scheme. In ***RPFC Vs SD College Hoshiarpur***, 1997

(1) LLN 520 the Hon'ble Supreme Court held that the Regional PF commissioner has no power to waive the penalty altogether. There was wilful disobedience of law by the appellant establishment. This is not a case to be tested on the ground of any financial constraints. The appellant, for their gainful purpose, delayed the transfer of past accumulations. They even attempted to embezzle the trust money. It is only after warning of criminal case that the appellant transferred the whole balance in the trust of the appellant. Hence the appellant is liable to pay damages on belated transfer of accumulations.

4. This is a case where the respondent allowed the appellant to run a provident fund trust for the purpose of handling the provident fund contribution of a class of employees. In the process of issuing an exemption order the respondent issued a relaxation order allowing the trust to handle the provident fund money in respect of a class of employees. The respondent later found that the relaxation granted is not working as per the conditions of relaxation and the appellant was informed regarding the proposal for cancellation of relaxation. As per the documents available it is seen that the process started somewhere in 2009 and it

culminated in the cancellation of exemption as on 31/3/2010. The order regarding cancellation was issued on 16/4/2010. As per the provision of the Act and Schemes, the appellant is required to transfer the cash in hand within 10 days of receipt of the order and the securities within 30 days. There was delay in transferring the cash as well as securities for which the respondent initiated action for levying damages.

5. One of the basic contentions raised by the respondent in this case is that Sec 14B of the Act is not applicable to transfer of past accumulation. On a plain reading of Sec 14B of the Act it can be seen that

> "when an employer makes default in the payment of any contribution to the fund, the pension fund, or the insurance fund or **in the transfer of accumulation required to be transferred by him** under sub sec 2 of Sec 15 or **sub sec 5 of Sec 17** or in the payment of any charges payable under any other provision of the Act or of any scheme or insurance scheme **or under any of the conditions specified U/s 17,** the Central PF Commissioner or such other officer as may be authorized

> by the Central Government, by notification in the official gazette in this behalf may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in this scheme. ”.

From the above it is very clear that Sec 14B is applicable to the transfer of accumulations as per Sec 17 (5) of the Act or in terms of any of the conditions specified U/s 17. As per Section 17 (5) .

> “ where any exemption granted under Sub Sec (1), Sub Sec 1C , Sub Sec 2, Sub Sec 2A or Sub Sec 2B is cancelled the amount of accumulation to the credit of every employee to whom exemption applied, in the provident fund, the pension, or the insurance fund or the establishment in which he is employed together with any amount forfeited from the employers share of contribution to the credit of the employee who leaves the employment before the completion of the full period of the service shall be transferred within such time and in such manner as may be specified in the scheme or the pension scheme or the insurance scheme to the credit of his account in the

fund or the pension fund or insurance fund as the case may be.”

6. Para 28 (2) of the EPF Scheme specifies that any cash lying with the trust shall be transferred within 10 days of cancellation of exemption and securities shall be transferred within 30 days of the cancellation of exemption. Admittedly there was delay in transfer of the past accumulation from the trust to the respondent. According to the learned Counsel for the appellant, the delay occurred because of the delay in en-cashing the securities and according to the learned Counsel for the respondent the appellant ought to have transferred the securities to the name of Central Board of Trustees instead of trying to en-cash them. The real bone of contention is an amount of Rs. 82,51,252/- lying with the account of the trust. According to the appellant this is an amount which was lying in the trust account as balance accumulated over years after declaring the statutory rate of interest to the employees. The learned Counsel for the respondent pointed out that the appellant was not willing to transfer this amount and was forced to transfer the same only after threatening with criminal action by the respondent. As discussed earlier any amount

lying in the provident fund trust account is required to be transferred to the statutory fund, as stipulated, within the time limit prescribed under Para 28(2) of EPF Scheme. Any delay in transfer will attract penalty U/s 14B of the Act. The learned Counsel for the appellant pointed out that there was no mensrea in belated transfer of accumulation. However the learned Counsel for the respondent argued that there was real mensrea in the delayed transfer of Rs. 82,51,252/- as the appellant was not willing to transfer the said amount and only after threatening legal action against the appellant the said amount was transferred. The learned Counsel for the appellant relying on the decision of the Division Bench of the Kerala High Court in ***RPFC Vs Harrisons Malayalam Ltd,*** 2013 (34) KLT 790 argued that there was huge accumulated loss during the relevant period of time and the financial difficulties shall be a ground for reducing or waiving damages U/s 14B of the Act. The learned Counsel for the respondent argued that the financial constraints of the appellant establishment is not at all relevant in this case as the amount was lying in the trust account of the appellant establishment and no explanation will justify the delay in transferring money. However, considering the fact that the impugned order of damages is issued as a penalty for delayed transfer and also considering the facts that the financial position of the appellant establishment was very bad during the relevant point of time, I am inclined to hold that the interest of justice will be met if the appellant is directed to remit 70% damages assessed U/s 14B of the Act.

Hence the appeal is partially allowed the impugned order is modified and the appellant is directed to remit 70 % of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer