



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Wednesday the 12th day of May, 2021)

APPEAL No.232/2019
(Old No. ATA 432(7)2015)

Appellant : M/s. Chirakkal Food Products
KP II/105E
Marottichuvadu, Mattoor,
Kalady P.O,
Kochi – 683 574.

By Adv. Suraj . S

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kochi -682017

By Adv. Thomas Mathew Nellimmoottil

This case coming up for final hearing on
30.03.2021 and this Tribunal-cum-Labour Court on
12.05.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/
KCH/27712/ Damages Cell / Ex-Parte / 2015 / 5535 dt.
30/03/2015 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 10/2004 to 08/2013. The total damages assessed is Rs. 4,62,386/-.

2. The appellant is a factory engaged in rice milling. The employment strength of the appellant establishment was less than 20 till 2012. During 2011 an Enforcement Officer of the respondent organization visited the appellant establishment and all the records as required by the Enforcement Officer were produced before him. The appellant thereafter received a notice dt. 12/2011 stating that the appellant establishment is covered under the provisions of the Act with effect from 01/10/2004. A true copy of the notice dt. 12/12/2011 is produced herewith Annexure 1. The appellant approached the respondent authority and disputed the coverage. As directed by the respondent authority, the appellant remitted the contribution from 01/10/2004. Thereafter the respondent issued a notice dt. 20/01/2015 alleging delay in remittance of provident fund contribution. The said notice is produced as Annexure 2. When the appellant enquired with regard to the date of personal hearing, it was informed that the next

date will be communicated to the appellant. However the appellant received only the impugned order dt. 30/03/2015. There was no willful delay on the side of the appellant establishment. The appellant establishment was not coverable from the date of damages and demand. The payment is made under protest and the respondent assured that the applicability will be decided in a subsequent proceedings. The appellant was not heard on the issue of clubbing of the appellant unit with M/s. Chirackal Agro Mills. Both are entirely different units and do not have any dependency. The respondent ought to have seen that after introduction of Sec.7Q the compensatory element is taken out of Sec 14B. The appellant failed to exercise his discretion U/s 14B of the Act. The presence of mensrea or actus reus to contravene a statutory provision must also to be held to be necessary ingredient for levy of damages as per the decision of the Hon'ble Supreme Court of India in **Employees State Insurance Corporation Vs HMT Ltd**, AIR 2008 SC 132.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered with

effect from 01/10/2004 vide Annexure 1 proceedings dt. 14/12/2011. The appellant establishment was covered as a branch unit of M/s. Chirackal Agro Mills which is a covered unit. A separate code number was allotted to the appellant purely for administrative convenience and it was clarified to the appellant that allotment of separate code number will not affect the date of original coverage of the establishment. The appellant establishment defaulted in payment of contribution from 10/2004 to 08/2013. Belated remittance of contribution will attract damages U/s 14B of the Act at the rates prescribed under Para 32A of EPF Scheme. Hence a notice dt. 01/04/2014 was issued to the appellant to show cause why penal damages U/s 14B of the Act shall not be levied. A detailed delay statement was also forwarded along with the notice. The appellant was also given a personal hearing on 1/5/2014. A true copy of the notice dt. 01/04/2014 is produced and marked as Exbt R1. The acknowledgement having delivered the notice on the appellant is produced as Exbt.R2. Though the summons dt.01.4.2014 was acknowledged by the appellant on 03/04/2014, there was no representation for the appellant

on the date of hearing. Hence the enquiry was adjourned to 03/06/2014. The enquiry was further adjourned to 21/08/2014 due to administrative reason with notice to the appellant. None appeared for the enquiry dt. 21/8/2014 also. The enquiry was again adjourned to 16/12/2014 with the notice to the appellant. There was no representation on the part of the appellant on 16/12/2014 also. True copies of the adjournment notices issued to the appellant are produced as Exbt. R3 series. Since the appellant failed to attend the hearing on any of the above mentioned dates, the respondent authority finalized the matter on the basis of the available records and issued the impugned order. The appellant establishment was covered under Sec 2A of the Act and there was no dispute regarding the coverage. The provisions of the Act will apply to an establishment by its own force and does not depend on the willingness of the employer. The appellant ought to have remitted contribution w.e.f 01/10/2004 and it is an unqualified liability on the appellant and does not depend on the vigilance or detection of the department concerned. The appellant cannot ignore the statutory liability cast upon

him as an employer under Paras 30 & 38 of EPF Scheme to remit the contribution within 15 days of close of every month in respect of all the eligible employees. The liability of the employer under the Act arises the moment the wages are earned by a member irrespective of whether it is actually paid or not. Any delay or default will attract the penal provisions under the Act. In ***Organo Chemical Industries Ltd Vs Union of India***, 1979 (2) LLJ 416 the Hon'ble Supreme Court of India held that the very purpose of Sec 14B is to deter and thwart employers from defaulting in forwarding contributions to the funds, most often with the ulterior motive of misutilising, not only their own, but also the employees contribution. The Hon'ble Supreme Court also held that the pragmatics of the situation is that if the stream of contributions were frozen by employers default after due deduction from wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of funds. There was no dispute regarding the fact that there was considerable delay in remittance of statutory contribution. Approximately 50% of the contribution payable by the employer represents the

employees share of provident fund contribution. The claim of the appellant they were not aware of the pendency of the Sec.14 B proceedings is not correct. Exbt R1 notice is acknowledged by the appellant on 03/04/2014 as evidenced by Exbt R2. The appellant was informed of the dates of hearing vide Exbt R3 series of notices. The appellant either ignored the notices or failed to attend the hearing. The decision of the Hon'ble Supreme Court in **HMT Ltd** case (supra) cannot be adopted in a case pertaining to provident fund. The respondent organization is required to refund the contributions with upto date compound interest as and when the same is due to an employee. Under ESIC Scheme the benefits are paid from a pooled account and there is no contingency were the contribution is returned to the members with interest. In **Chairman, SEBI Vs Sri Ram Mutual Fund**, AIR 2006 SC 2287 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provision of a civil Act and that the penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intentions of the

parties committing such violation becomes immaterial. In ***Maharashtra State Co-operative Bank Vs Assistant PF Commissioner***, 2009 (10) SCC 123 the Hon'ble Supreme Court held that the expression any amount due from an employer includes damages and interest. If any amount payable by the employer becomes due and same is not paid within the stipulated time the employer is required to pay interest in terms of mandate U/s 7Q. Likewise the default on employers' part to pay any contribution to the fund can visit him with the consequence of levy of damages.

4. According to the learned Counsel for the appellant the appellant establishment is covered clubbing the unit with another unit and the appellant establishment is not independently covered. According to the learned Counsel for the respondent, the appellant establishment was rightly covered U/s 2A of the Act as per Annexure A1. According to him Annexure A1 communication dt. 14/01/2011 has very clearly indicated that the appellant establishment is having its head office at Marottichode, Mattoor, Kalady P.O, Ernakulam which is a covered unit under the provisions of the Act. It was also mention in Annexure A1

communication that the appellant establishment is a branch of the M/s. Chirackal Agro Mills. It is clearly indicated in Annexure 1 that a separate code number is issued to the appellant w.e.f 01/10/2004 for administrative convenience only. The appellant never raised a dispute regarding the coverage. The claim of the appellant in this appeal that they raised a dispute orally before the respondent authority is not at all substantiated. Had there been any dispute, the appellant could have raised the same in writing and the same ought to have been decided in an enquiry U/s 7A of the Act. The present claim of the appellant that they raised a dispute orally in 2011 and remitted the contribution under protest cannot be accepted, as no further dispute was raised by the appellant before the respondent authority till the order levying damages is received by them.

5. Another issue raised by the appellant is that they were not in receipt of the summons issued by the respondent authority. According to the learned Counsel for the appellant the notice received by them did not contain any date and therefore they approached the respondent to

find out the date of hearing of the case. However it can be seen that the Annexure 2 produced by the appellant is an unsigned undated notice and the actual notice signed by the respondent authority with the date of hearing on 01/05/2014 is produced by the respondent as Exbt R1. It is also seen that the notice is acknowledged by the appellant as per Exbt R2. It is seen that there after notices were issued as per Exbt R3 series for hearing on 03/06/2014, 21/08/2014 & 16/12/2014. The appellant failed to attend any of the hearings and therefore they cannot take a plea that they were not aware of the proceedings pending before the respondent authority.

6. The learned Counsel for the appellant argued that there was no mensrea in belated remittance of contribution. According to the learned Counsel for the respondent, appellant establishment is admittedly a branch unit of a covered establishment and therefore the appellant ought to have complied with the provisions of the Act and Schemes thereunder with effect from 01/10/2004 which is the actual due date of applicability. Since the appellant failed to comply with the provisions of the Act from the due date of

applicability, the appellant cannot plead that there was no mensrea in belated remittance of contribution. The learned Counsel for the respondent also argued that the appellant deducted the employees' share of contribution from the salary for the period from 10/2004 to 8/2013 and failed to remit even employees' share of contribution deducted from the salary of the employees in time. According to the learned Counsel for the appellant the appellant establishment remitted both the contributions and it is not correct to state that the employees' share was deducted from the salary of the employees and not remitted to the respondent authority. Though there is no evidence on the side of the respondent to confirm that the employees' share is deducted from the salary of the employees, it is only probable that the appellant started deducting the employees share of contribution only from the date of receipt of the Annexure 1 communication dt. 14/12/2011. As seen from Annexure 2 delay statement the delay in remittance of contribution upto 12/2011 was huge running into years together whereas the delay from 1/2012 onwards in nominal ranging from 8 to 41 days. In the background of

the above narrated facts, it is not possible to argue that the delay in remittance of contribution atleast upto 11/2011 was intentional and no mensrea can be attributed to the delayed remittance of contribution. To that extent the appellant is entitled for some relief as far as damages are concerned.

7. 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 65% of the damages assessed U/s 14 B of the Act.

Hence the appeal is partially allowed the Impugned order is modified and the appellant is directed to remit 65% of the damages assessed U/s 14 B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer