



सत्यमेव जयते

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

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

(Monday the 5<sup>th</sup> day of April, 2021)

**APPEAL No.444/2019**

(Old No. ATA No.05(7)/2016)

Appellant : M/s. HHA Tank Terminal Pvt. Ltd.,  
No. C.C.24/1869, Muraf Area,  
Indira Gandhi Road,  
Willingdon Island  
Kochi – 682 003.

By Adv. M.A. Shaji &  
Adv. Joseph C Varghese

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

This case coming up for final hearing on 05.03.2021  
and this Tribunal-cum-Labour Court on 05.04.2021  
passed the following:

**ORDER**

Present appeal is filed from order No. KR/  
KCH/19157/ DAMAGES CELL / PJT / 2015/ 14001 dt.  
09/12/2015 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 02/2010 to 11/2013 . The total damages assessed is Rs. 1,32,004/-.

2. The appellant is a registered private limited company under the Companies Act 1956. The appellant establishment is covered under the provisions of the Act from the year 1984 and the appellant was remitting contribution in time inspite of financial difficulties faced by the appellant. The appellant entered into a contract for service to render services for cleaning the tanks and another for providing security on principal to principal basis. The appellant paid the service charges to the contract establishment. The Regional PF Commissioner held that the employees engaged through an independent contractor also is required to be covered by the principal employer. The copies of the enquiry proceedings under EDLI Scheme dt. 01/11/2013 and 18/9/2013 together with written submissions made by the appellant is produced and marked as Annexure A2. Without entering into a dispute, the appellant agreed and enrolled the employees employed by the independent contract

establishment treating them as employees of the appellant and remitted the contribution. The true copies of the challan having remitted the contribution is produced and marked Annexure A3 series. The respondent thereafter issued a notice U/s 14B alleging that there was delay in remittance of contribution. The appellant was also given an opportunity for personal hearing on 25/06/2014. A representative of the appellant appeared before the respondent. The representative submitted in the enquiry that the appellant remitted the contribution in respect of employees of independent contractors only to avoid a dispute with the respondent organization. It was also pointed out to the respondent that the appellant paid both the contributions, that of the employer as well as employees to sort out the issue amicably. The appellant vide letter dt.14/06/2014 explained to the respondent the circumstances leading to the belated remittance of contribution in respect of few employees whose details were submitted vide Form 5 which is produced and marked as Annexure A5. The appellant further requested that the default happened unknowingly and being the only

one and also the first from the date of applicability of the Act requested respondent to completely waive or reduce the damages to the minimum. A photocopy of the letter dt. 14/6/2014 is produced and marked as Annexure A6. Without considering any of the representations made by the appellant the respondent issued the impugned order assessing damages and interest. The manner in which the impugned order is issued clearly discloses total non-application of the mind by the respondent authority. The Hon'ble Supreme Court in ***Organo Chemical Industries Vs Union of India***, 1979 LIC 1261 held that reasons are to be recorded in the order awarding damages. Having regard to the punitive nature of power exercisable U/s 14B and the consequences that ensue there from, an order U/s 14B must be a speaking order containing the reasons in support of it. The respondent authority ought to have looked into the various facts and circumstances explained by the appellant before deciding the quantum of damages. The Hon'ble Apex Court in ***M/s. Hindustan Steel Ltd Vs State of Orissa***, AIR 1970 SC 253 held that an order imposing penalty for failure to carry out a statutory

obligation is the result of a quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. In **Prestolite (India) Ltd Vs Regional Director**, 1995 SCC (L&S) 202 the Hon'ble Supreme Court held that legislation does not provide that adjudication for the purpose of levy of penalty, proceedings would be a mere formality or imposition of penalty as also computation of quantum thereof become a foregone conclusion. The Hon'ble Supreme Court of India in **ESIC Vs HML Ltd**, 2008(3)SCC 35 held that the existence of mensrea or actus rea to contravene the statutory provision must also be held to be a necessary ingredient for levy of damages and / or quantum thereof.

3. According to the learned Counsel for the appellant the appellant establishment was regular in compliance. The respondent authority while considering the exemption application under EDLI Scheme, noticed that some of the employees engaged by the appellant on contract basis are not enrolled to provident fund. The

appellant took a view that the contract for cleaning the tanks are a contract for service and the appellant is not aware of the employees engaged by the contractors and the wages paid to them. The appellant was only paying the contractors the amount as agreed in the contract the rest of the contractual obligations was handled by the contractor. Similarly the appellant was also engaging few securities on contract and according to the respondent it was the responsibility of the appellant to ensure that social security benefits are extended to all the eligible contract employees. The appellant also took a view that few of the contract employees were drawing salary beyond the statutory limit and therefore they are excluded employees under the provisions of Act and Schemes. Since the respondent insisted that the appellant shall enroll the eligible contract employees and ensure payment of contribution to them, the appellant enrolled the contract employees and remitted the contribution. According to the learned Counsel for the appellant both the contributions ie, the employer as well as the employees share of contribution was remitted by the appellant as there was

no possibility for recovering the employees share of contribution from the concerned contract employees. It is in this background that there was some delay in remittance of provident fund contribution and according to the appellant it is the first and last occasion when there was delay in remittance in provident fund contribution. The submissions and pleadings made by the appellant were not at all controverted by the respondent. In such circumstances it is not possible to allege any intentional delay or mensrea on the part of the respondent in remitting the contribution belatedly. The learned Counsel for the appellant also filed a statement wherein the remittance details in respect of the regular employees for the period from 04/2010 to 03/2013 is furnished. It is seen that there was no delay in remittance of contribution by the appellant establishment during the above period. Hence the claim of the learned Counsel for the appellant that the appellant establishment was regular in compliance except for the one incident for delayed remittance in respect of contract employees can be accepted. On perusal of the impugned order it is seen that the same is absolutely non-

speaking. The appellant has raised all the above issues through various representations before the respondent authority at the time of the enquiry. None of the above representations and pleadings were considered by the respondent authority while issuing the impugned order. Hence it is an appropriate case to be remitted back to the respondent to re-examine the whole issue on merits. However it is felt that it will only add agony to the appellant and will serve no purpose.

4. Considering all the facts, circumstances and pleadings I am inclined to hold that interest of justice will be met if the appellant is directed to remit 40 % of the damages assessed as per the impugned order.

Hence the appeal partially allowed the impugned order is modified and the appellant is directed to remit 40% of damages assessed U/s 14B of the Act.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer