



सत्यमेव जयते

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

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

(Tuesday the 11th day of May, 2021)

APPEAL No.794/2019

Appellant M/s. Mangalam Publications (India) Pvt. Ltd
S.H Mount P.O
Kottayam – 686 006

By Adv. V. Krishna Menon

Respondent The Assistant PF Commissioner
EPFO, Thirunakkara,
Kottayam -686 001

By Adv. Joy Thattil Itoop

This case coming up for final hearing on
25.03.2021 and this Tribunal-cum-Labour Court on
11.05.2021 passed the following:

ORDER

Present appeal is filed from order No. KR/
KTM/5975/ APFC / Penal Damage/14B/2019-20/6052
dt. 29/10/2019, 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 07/2015 to 02/2018. (i.e, remittance of EPF dues made during the period 29/03/2018 & 30/06/2019). The total damages assessed is Rs.56,26,273/-.

2. The appellant is an establishment registered under Company's Act 1956. The appellant establishment is covered under the provisions of the Act. The appellant was served with a copy of the notice dt. 13/08/2019 proposing imposition of damages U/s 14B of the Act for belated remittance of contribution. The appellant was also offered a personal hearing on 26/08/2019. An authorized representative of the appellant attended the hearing and submitted that the delay in remitting contribution was not deliberate or willful but only on account of the precarious financial condition of the appellant. A copy of the written submission submitted by the appellant is produced and marked as Annexure A5. Without properly appreciating the contentions, respondent issued the impugned order which is marked as Annexure A6. There is no proof to show that there was any intentional default on the part of the appellant. The delay is due to the financial constrains and due to the continuous loss. The accumulated loss of the company as on

31/03/2018 was Rs. 678.05 lakhs. A copy of the balance sheet as on 31/03/2016 is produced as Annexure A1. A copy of the balance sheet as on 31/03/2017 is produced and marked as Annexure A2. A copy of the balance sheet as on 31/03/2018 is produced and marked as Annexure A3. Considering the financial situation of the appellant establishment the respondent ought to have exercised his discretion provided U/s 14B of the Act and Para 32A of EPF Scheme. The respondent also failed to notice that there was no mensrea in belated remittance of contribution. After the introduction of Sec.7Q with effect from 01/07/1997, there is no justification in penalizing the appellant U/s 14B of the Act.

3. The respondent filed counter denying the above allegations. There was delay in remittance of provident fund contribution by the appellant for the period from 7/2015 to 02/2018. Hence a notice was issued to the appellant alongwith a delay statement containing the due date of remittance, the actual date of remittance and the delay in remittance of contribution and the proposed damages for the delay. The appellant was also given an opportunity for personal hearing. A representative of the appellant attended the hearing

and filed Annexure A5 representation without any supporting documents. Annexure A1 to A3 which are produced in this appeal are incomplete and selected pages of the independent auditors report. There is no averment as to how the appellant suffered losses and whether the losses were due to factors beyond the control of the appellant. Self inflicted losses cannot be used to escape the natural consequences there from, including levy of penalty U/s 14B. The Annexure A1 to A3 now produced by the appellant is not admissible in evidence. Annexure A1 to A3 states that the appellant is regular in payment of all statutory dues except ESIC and PF which makes it abundantly clear that there was no financial difficulty causing the delay in remittance of contribution. It is also seen from Annexure A1 to A3 that the wages and managerial remuneration were paid in time. Hence the claim of financial difficulty by the appellant is baseless and made with the sole motive of obtaining a reduction of damages. The appellant is a chronic and willful defaulter and the respondent has assessed damages on many occasions for belated remittance of contribution. The respondent has narrated 8 instances starting from 6/1982 to 2/2018 wherein damages had been

levied on belated remittance of contribution. It is also pointed out that in all such cases the appellant approached the appellate authority or the Hon'ble High Court and delayed remittance of damages assessed against the appellant. It is a statutory obligation on the part of the appellant to remit the contribution within 15 days of close of every month as provided under Para 38 of EPF Scheme. When there is delay the appellant is liable to pay damages for belated remittance of contribution.

4. The only ground pleaded by the appellant for belated remittance of contribution is that of financial difficulties. Though the appellant through Annexure A5 claimed financial difficulties before the respondent authority, failed to substantiate the same with documentary evidence. Hence the respondent authority did not consider the claim of financial difficulties. It is also seen that the appellant has contended that they approached the Hon'ble High Court of Kerala and the Hon'ble High Court has given installment facility to remit the contribution. However the appellant failed to produce any documents or furnished any details regarding the same. The appellant produced Annexure A1 to A3 in this appeal to

substantiate the claim of financial difficulties. It is seen that in all the above documents there is a categorical finding by the auditors that the appellant is regular in compliance with all statutory payments except ESIC contribution and EPF contribution. As per Annexure A1 the profit and loss account and balance sheet for the year ending 31/03/2006 there was a default of Rs.77,41,613/- towards provident fund. As per Annexure A2 there is a default to the tune of Rs.7,75,835/- in provident fund account. As per Annexure A3 there is a default of Rs.1,27,08,404/- in provident fund account. Hence as rightly pointed out by the learned Counsel for the respondent, the appellant is a chronic defaulter with regard to remittance of provident fund contribution since all other statutory liabilities are cleared by the appellant establishment as per the above referred Annexure A1 to A3. The learned Counsel for the respondent also narrated the details of 8 instances wherein damages were levied for belated remittance of contribution against the appellant starting from 06/1982 to 02/2018. This further proved the claim of the respondent the appellant establishment is a chronic defaulter in remittance of provident fund contribution. As per the documents produced now in the

appeal, the revenue from operations for the year 31/03/2016 is Rs.38.08 crores and for the year ending 31/03/2017 the revenue from operation is Rs.38.55 crores and for the year ending 31/03/2018 the revenue from operations is 33.86 crores. It is also seen that for the year ending 31/03/2016 the employees benefit expenses incurred by the appellant is Rs. 6.76 crores. And for the year ending 31/03/2017 it is Rs.6.25 crores and for the year 31/03/2018 it is 5.96 crores. It is also seen from the documents that the appellant has accounted Rs.1,43,20,506/- towards provident fund, ESIC contribution and TDS for the year ending 31/03/2016. And the amount of Rs.2.14 crores for the year ending 31/03/2017 and Rs.2.1 crores for the year ending 31/3/2018. Similarly it is also seen that the appellant has accounted Rs.5.45 crores towards salaries and wages for the year ending 31/03/2016 and Rs.5.46 crores for the year ending 31/03/2017 and 5.27 crores for the year ending 31/03/2018. From the above data furnished in the documents now produced by the appellant it is clear that the wages for the employees were paid in time, provident fund is deducted and accounted, but there is the same is not remitted to the respondent organization. On a

perusal of the Annexure A4 notice issued by the respondent enclosing therewith, the delay statement it can be seen that the delay in remittance of contribution varies from one year to three years. As pointed out earlier, the salaries for the employees were paid in time and the appellant is holding the employees share of contribution for such a long period. Non-remittance of employees share of contribution deducted from the salary of the employees is an offense U/s 405 & 406 of Indian Penal Code. Having committed the offence of breach of trust, the appellant cannot claim that there was no mensrea in belated remittance of contribution atleast to the extent of 50% of the total contribution which is deducted from the salary of the employees is kept with the appellant years together. Since the appellant was holding such huge amounts for years together and re-circulating the money in the business of the appellant establishment, the appellant is not entitled for any relief in terms of damages.

5. The learned Counsel for the appellant pointed out that the appellant establishment was running under loss all along. However it is seen from the documents produced by the appellant that for the year ending 31/03/2016 the appellant

earned a profit of Rs.66.87 lakhs. And for the year ending 31/03/2017 there was a loss of Rs. 40.02 lakhs and for the year ending 31/03/2018 there was a loss of Rs. 80.30 lakhs. The learned Counsel for the respondent argued that the documents now produced by the appellant may not be taken into account for the purpose of deciding the profitability or loss of the appellant establishment, since those documents were not properly proved before the respondent authority. In ***Aluminium Corporation Vs Their Workmen***, 1964 (4) SCR 429 the Hon'ble Supreme Court held that the mere statements in the balance sheet as regards current assets and current liabilities cannot be taken as sacrosanct. The correctness of the figures as shown in the balance sheet itself are to be established by proper evidence by those responsible for preparing the balance sheet or by other competent witnesses. It is true that the documents cannot be relied on fully for deciding the financial status of the appellant establishment. However there is sufficient indication that the appellant had some financial difficulties at the relevant point of time. Though the financial difficulties cannot be attributed as an exclusive reason for the delayed remittance of contribution for almost

three years. However considering the fact that there was some financial difficulties, the appellant is entitled for some relief in levy of damages.

6. 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 80% of the damages.

Hence the appeal is partially allowed the Impugned order is modified and the appellant is directed to remit 80% of the damages.

Sd/-
(V. Vijaya Kumar)
Presiding Officer