



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**
Present: Shri.V.Vijaya Kumar, B.Sc., LL.M., Presiding Officer.
(Tuesday the 5th day of October, 2021)

APPEAL No.796/2019

Appellant

M/s. Bell Foods(Marine Division)
Pallichal Road, Thoppumpady
Kochi -682005

By Adv. C. Anil Kumar

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office,
Kaloor, Kochi 682017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 18.06.2021 and this Tribunal-cum-Labour Court on 05.10.2021 passed the following.

ORDER

Present appeal is filed from order No. KR/KCH/15763/Penal Damages/2019/7100 dt. 31/10/2019 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 03/2005 to 07/2007, 04/2009 to 04/2013, 05/2013 to

01/2015 & 12/2015 to 09/2018. The total damages assessed is Rs.1,65,146/-.

2. The appellant is a SSI Unit engaged in manufacturing of Frozen Sea Food. From the year 2004 the appellant had become a sick unit. The appellant submitted a proposal for sick unit revival program before the District Industry Centre and the District Industry Centre in turn forwarded the same to Canara Bank, Ernakulam South branch for consideration.

3. The respondent authority initiated action for assessment of damages for delayed remittance of contribution for the period from 04/1999 to 02/2009. The appellant appeared before the respondent and produced the records and finding that the remittances were made in time, the respondent authority closed the proceedings. Subsequently the respondent issued another notice alleging delay in remittance of contribution for the period from 02/2015 to 07/2015. This demand of the respondent was also settled by the appellant. The respondent again issued a demand alleging that there was delay in remittance of contribution for the period from 30/06/1996 to 31/03/2019. The appellant appeared before the respondent authority and filed a written statement dt. 16/10/2019 which is produced and marked as Annexure 8. According to the learned Counsel for the appellant, the respondent issued the impugned order without adverting to any of the objections raised by the appellant in Annexure A.

4. The respondent filed counter denying the above allegations. According to the respondent, the respondent authority considered the statement and assessment of damages is made excluding the period for which assessment has already been done. It is also pointed out that in Annexure 1 and Annexure 2 are only the initial steps for considering a unit under sick unit rehabilitation program. However there is no evidence to show that the unit is declared 'sick' or the rehabilitation program is support by the bank. It is also pointed out that in **Gauri's Spinning Mills (P) Limited Vs APFC , Salem and Another, 2006 (5) CTC 1** the Full Bench of Hon'ble High Court of Madras held that the provident fund dues under EPF Act are not covered by Section 22 of SICA and even a Sick Industrial Company cannot avoid payment of statutory contribution under the Act . It is also specifically pleaded that damages were arrived at by the respondent excluding all the periods where in the damages were earlier assessed and payments were already received.

5. During the course of argument the learned Counsel for the appellant pointed out a serious infirmity in the impugned order. It is pointed out that there was absolutely no application of mind by the respondent authority while issuing the impugned order. According to him Annexure 8 is the written statement filed by the appellant before the respondent authority. In the written statement the appellant pointed out that, in the delay statement send along with the summons, the rate of damages prevailing prior to 25/09/2008 for the period after 2008 was applied. It was also

pointed out in the Annexure 8 written statement that they were prejudiced by the fact that the respondent authority proposed to levy damages on the alleged delay in remittance of contribution for the period from 2005 onwards. It was also pointed out that the respondent authority initiated action for assessing damages which were subsequently closed. The Annexure 8 also furnished the details of such assessment made. On a perusal of the impugned order it is seen that none of the issues raised in the Annexure 8 written statement is considered by the respondent authority. In the written statement filed, the respondent tried to fill up the gaps by saying that the present assessment is made excluding the periods for which the damages has already been assessed and recovered from the appellant establishment. When a quasi judicial proceedings is initiated against an employer by the respondent authority it is his responsibility to answer the issues raised during the course of proceedings in the impugned order itself. The attempt of the respondent to fill up the gaps in the counter will not satisfy the legal requirements.

6. Another serious infirmity pointed out by the learned Counsel for the appellant is that it is a clear case that there is no application of mind by the respondent authority. According to him the respondent authority has reproduced an order issued by the Regional PF Commissioner U/s 14B against another establishment, M/s Arbion Infra Services. He also produced a copy of the order dt.18/06/2019 issued by the Regional PF Commissioner U/s 14B of the Act to substantiate the claim. On a comparison of both these

orders it is seen that it is a clear case of “cut and paste” and there is absolutely no application of mind while issuing impugned order. The learned Counsel for the appellant also produced a recent decision of the Hon'ble High Court of Kerala dt.23/03/2021 in **Handmade of Sacred Heart of Jesus Society Vs Employees Provident Fund Organization & Others**, W.P.C No. 23581/2015 (w). In the above case the Hon'ble High Court of Kerala was considering an order issued U/s 14B and interest U/s 7Q of the Act. The Hon'ble High Court found that

“ The 2nd respondent in Exbt. P8 recites that he has applied his mind to all relevant factors and reminds himself of the Apex Court’s direction to pass reasoned order after due application of mind. However, the order shows that there is no application of mind while passing the order U/s 14B imposing damages. It does not disclose consideration of any relevant factors for levying damages U/s 14B. Further, on going through Exbt P8, this Court also feels that the 2nd respondent has also issued the said order after making modifications in some other order passed by him which was retained in the computer.”

The Counsel also referred to the decision in **Standard Furniture, Calicut Vs Registrar EPF Appellate Tribunal and Others**, 2020 (3) KHC 793 wherein a Division Bench of this Court cautioned the authorities exercising powers U/s 14B of the Act from passing orders using standard printed forms

especially when they exercise quasi judicial functions. The Court held that various factors have to be adjudicated before levying penalty U/s 14B and therefore printed forms are unsuited for the purpose. The Court also directed the Employees Provident Fund Authorities to ensure that the practice of using printed standard forms to issue orders U/s 14B of the Act is stopped forthwith.

Very recently, the Apex Court, in **Union Public Service Commission Vs Bibhu Prasad Sarangi and Others**, 2021 SCC Online SC 187 deprecated the use of ‘cut-copy-paste’ in judgments and held that “prolific use of the ‘cut-copy-paste’ function

should not become a substitute for substantive reasoning which constitute the soul of a judicial decision”.

7. I am of the considered view that the above decision of the Hon'ble High Court of Kerala is squarely relevant in the circumstances of this appeal. A perusal of the impugned order as well as the order dt.18/06/2019 of the Regional PF Commissioner would clearly show that it is a clear case of ‘cut-copy-paste’ adopted by the respondent authority. Further as can be seen, the issues raised by the appellant before the respondent authority is not at all considered by the respondent authority while issuing the impugned order. It is seen that the Annexure 7 notice issued by the respondent specifies the assessment of damages from 03/2005 and the impugned order specifies the period, in first page of the order, as 30/06/1996 to 31/03/2019. The respondent

authority shall avoid this kind of mistakes particularly in an order levying damages U/s 14 B of the Act.

8. In view of the above preliminary infirmities I am not inclined to go into the merits of the appeal. The respondent authority shall consider all the issues raised by the appellant and issue a speaking order taking into account all the issues raised by the appellant. It is made clear that the respondent authority shall decide the matter on merit untrammelled by the observations in this order.

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the respondent to reassess the damages within a period of 6 months after issuing notice to the appellant .

Sd/-

(V. Vijaya Kumar)
Presiding Officer