



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 1st day of February, 2021)

APPEAL No.620/2019 & 621/2019
(Old Nos. 574(7)2013 & 574(7)2013)

Appellant

M/s. MM Publications Ltd.,
PB No.226,
Kottayam - 686001

By M/s. B.S. Krishnan Associates

Respondent

The Assistant PF Commissioner
EPFO, Sub- Regional Office,
Kottayam -686 001

By Adv. Joy Thattil Ittoop

This case coming up for final hearing on
06.01.2021 and this Tribunal-cum-Labour Court on
01.02.2021 passed the following:

ORDER

Appeal No. 620/2019 is filed from the
composite order No. KR / KTM / PD / RPFC / 3700 /
Sammon / 3229 dt. 11/6/2013, 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 4/2005 to 10/2011. The total damages assessed is Rs.3,01,064/- The interest demanded U/s 7Q of the Act for the same period is also being challenged in the appeal.

2. Appeal No.621/2019 is filed from order No.KR/KTM/PD/RPFC/3700/VCIpe/3228 dt. 11/6/2013 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 04/2005 to 10/2011. The impugned order is a composite order assessing damages as well as interest U/s 7Q for the same period. The damages assessed is Rs. 1,79,500/- and the interest assessed for the same period 1,01,478/-.

3. Appellant establishment is engaged in the business of publishing magazines, weekly, fortnightly and also monthly. While publishing the above said magazines the appellant establishment used to affix or insert leaflets compliments etc along with various publications. Affixing of leaflets includes labelling insertion includes, insertion of scale, eraser, pencil, pencil cutter etc. Sometime compliments such as bath soap, shampoo etc are also inserted in these publications before circulation. The

above said work arises only on special occasions. The appellant establishment is not engaging regular employees to carry out the work. The appellants is engaging two contractors Shri. Samson George and V.C Iype to get the work done. The amount paid to contractors are lumpsum payments. Appellant is not aware whether the contractors are engaging workers to complete the work or whether they themselves are executing the works. The contractors are also not exclusively engaged by the appellant establishment. They are free to do the work in other establishments as well. It is clear that there is no wage element in the lumpsum payment made to the contractors and the appellant is not liable to pay provident fund contribution against those contract amounts. While so the respondent initiated action U/s 7A of the Act and vide order dt. 14/12/2012 the respondent directed the appellant to remit the contribution in respect of the amounts paid to the contractors. The appellant remitted the amounts as directed by the respondent towards contributions. The appellant issued notices directing the appellant

establishments to show cause why damages shall not be levied for belated remittance of contribution. The appellant remitted the interest portion of the amount on 11/7/2013. It is clear from the above facts that there is no fault on the part of the appellant and thereby the quantum of damages should be compensatory rather than penal. A representative of the appellant attended the hearing and explained the reasons for delayed remittance of contribution. Ignoring the contentions of the appellant, the respondent issued the impugned order. The respondent failed to consider the explanation offered by the appellant and issue a speaking order. The respondent ought to have seen that the appellant is not liable to pay contribution on the contract amount paid to the contractors. As a matter of fact the delay in remitting the contribution was due to the disputed question of law whether contribution need to be remitted against the amount given to the contractor as a lumpsum payment. The respondent ought to have used his discretion U/s 14B of the Act to see that the contribution was delayed

due to genuine doubt regarding the applicability of the Act to the contract amount paid in lumpsum.

4. The respondent filed counter denying the above allegations. The appellant establishment delayed remittance for the period from 4/2005 to 5/2011. Belated remittance of contribution attracts damages U/s 14 B of the Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant along with a delay statement. The appellant was also given an opportunity for personal hearing. Para 38 of EPF Scheme stipulates that the employer before paying the member his wages for the period for which contributions are payable, deduct the employees contribution from his wages and deposit along with his own contribution within 15 days of close of every month. Since the appellant failed to remit the contribution, he is liable to pay damages U/s 14B and also interest U/s 7Q of the Act. The respondent is liable to pay social security benefits to the members of the fund such as interest on provident fund contribution, pension and also insurance. Any delay in payment of contribution will affect the benefit delivery system and affect the

members of the provident fund. The definition of an employee U/s 2(f) of an Act included any person employed through contractor. Hence the appellant cannot take the plea that they are not liable to remit the contribution in respect of contract employees employed by them.

5. The appellant is an establishment engaged in publishing magazines. They engaged two contractors for inserting leaflets and compliments in those publications before delivery to the customers. According to the learned Counsel for the appellant, the contract is for the job to be done and not to engage workers to do the work. Hence the contractors were being paid a lumpsum and they are not aware of wage components. Hence there was a dispute whether the employees working under the contractor or the contractor themselves are liable to be enrolled to provident fund. This issue was resolved through a proceedings U/s 7A of the Act by the respondent holding that the contract employees will have to be enrolled to provident fund. According to the learned Counsel for the respondent the definition of employee U/s 2(f) of the Act is wide enough to account the contract employees and

therefore they will have to be enrolled to PF membership. Immediately after issue of the Sec 7A orders, the appellant remitted that contributions. The impugned orders are consequence of the Sec 14B action initiated for levy of damages and interest. According to the learned Counsel for the appellant the respondent authority ought to have seen that there is no element of mensrea in the belated remittance of contribution. The Hon'ble Supreme Court of India in ***Mcleod Russel India Ltd Vs RPFC***, 2014 (O) AIR (SC) 2573 held that the presence or absence of mens rea and or actus reus would be a determinative factor in imposing damages U/s 14B as also the quantum thereof since it is not inflexible that 100% of the arrears has to be imposed in all the cases. This decision was later followed by Hon'ble Supreme Court in ***Assistant PF Commissioner Vs Management of RSL Textiles India Pvt Ltd***, 2017(3) SCC 110. The learned Counsel for the appellant pointed out that in ***RPFC Vs Harrisons Malayalam Ltd.***, 2013 (3) KLT 790 the Division Bench of the Hon'ble High Court of Kerala also followed the above decisions while holding that the respondent

authority shall exercise his discretion, taking into account the facts and circumstances of each case. The learned counsel for the appellant also referred to the recent decision of the Division Bench and Hon'ble High Court of Kerala in ***Standard Furniture Vs EPF Appellate Tribunal***, 2020 (4) KLT 105 wherein the Hon'ble Court held that the levy of damages U/s 14B of the Act is not automatic and that all the circumstances which lead to the delay in remitting the provident fund contribution have to be factored by the authorities concerned before issuing an order U/s 14B of the Act. It is not clear from the impugned orders whether the appellant pleaded the reasons for delay before the authority U/s 14B. From the impugned orders, it is seen that the appellant raised some dispute regarding some mistakes in the delay statement and calculation of damages and interest. Respondent corrected those mistakes to the extent it is admitted by them. However it is seen from the facts of this case that the appellant had a genuine doubt regarding the eligibility of contractors to be enrolled to the provident fund. The issue was taken up by respondent U/s 7A of the Act and

the contributions as directed by the respondent U/s 7A of the Act was remitted by the appellant. The learned Counsel for the respondent argued that there was violation of Para 38 of the EPF Scheme as the appellant was liable to remit both the contributions in the first instance in respect of its contract employees, with the respondent. Having violated the said provision the appellant cannot claim that there was no element of mensrea in belated remittance of contribution. I am not in a position to accept the argument of the learned Counsel for the respondent that there is an element of mensrea due to violation of Para 38 of EPF Scheme. In the facts and circumstances explained above, it is very clear that the appellant had a genuine doubt whether lumpsum payment made to the contractors will attract provident fund deduction. However the appellant complied with the directions issued by the respondent U/s 7A of the Act. In such circumstances it is not possible to hold that there was intentional delay in remitting provident fund contribution.

6. It is seen that in the impugned order, in appeal number 620/2019, there is a clerical mistake in the order portion of the impugned order under challenge. The order reads that “ in exercise of powers conferred upon me by Sec 14B of the Act, hereby levy damages by way of penal to the tune of Rs. 30,10,641/- (Thirty lakh ten thousand six hundred and forty one only) at the above mentioned rates, for the delay in remittance of dues for the period 4/2005 to 10/2011.” However in the summary portion, it is mentioned that the damages assessed is Rs. 3,01,064/- (Three lakh one thousand and sixty four only) It is seen that the impugned orders are issued on 07.06.2013 and it is not fair to remit the matter back to the respondent to correct the mistake. The assessment of damages is taken as Rs. 3,01,064/- for the purpose of this appeal.

7. It is also pointed out by the learned Counsel for the appellant that the interest portion of the impugned order had already been remitted by the appellant. Even otherwise the interest U/s 7Q, being a statutory liability, the quantification of the same cannot be challenged in an

appeal U/s 7(I) unless there is a clerical mistake in the calculation of interest, which can be done by the respondent himself.

8. Considering all the facts, pleadings and evidence in this appeal, I am inclined to hold that interest of justice will be met if the appeal is directed to remit 70% of the damages assessed U/s 14B of the Act.

Hence the appeals are partially allowed the impugned orders are modified and the appellant is directed to remit 70% of damages assessed as per the impugned orders.

Sd/-

(V. Vijaya Kumar)
Presiding Officer