



सत्यमेव जयते

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

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

(Monday the 8<sup>th</sup> day of November, 2021)

**APPEAL No.171/2018**

(Old no.A/KL-110/2016)

Appellant : M/s.M.V.J. Spices (I) Pvt Ltd  
U.C. College P.O.  
Aluva  
Ernakulam – 683102

By M/s.B.S.Krishnan Associates

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for hearing on 29.07.2021 and this Industrial Tribunal-cum-Labour Court on 08.11.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KCH/21603/DAMAGES CELL/EX-PARTE/2016/6752 dt.21.07.2016 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 03/1995 to 10/2006. The total damages assessed is Rs.2,50,960/-.

2. The appellant establishment is engaged in procuring, processing and marketing of spices. The employment strength of the appellant reached 20 on 05.10.2006 the appellant remitted the provident fund contribution in respect of all the employees from that date. The appellant never defaulted in payment of contribution. While so the respondent passed an order U/s 7A of the Act preponing the coverage to 01.03.1995 clubbing the establishment with another establishment namely M.V.J.Foods (India) Ltd and assessed an amount of Rs.2,60,233/- as arrears of contribution for the period from 01.03.1995 to 31.10.2006. True copy of the said order dt.30.05.2000 is produced and marked as Annexure 1. The above order includes both employees' and employer's share. The request for waiving the employees' share was declined by the respondent. Therefore the appellant paid the entire amount immediately.

3. The respondent issued a notice dt.07.04.2014 proposing to impose damages for belated remittance of contribution for the period from 03/1995 to 10/2006. A true copy of the notice dt.07.04.2014 is produced and marked as Annexure 2. The appellant submitted a representation dt.29.05.2014 pleading that there was no wilful delay on the part of the appellant as the appellant started extending the benefits from 10/2006 as the statutory requirements were met by that time. A true copy of the representation of the appellant is produced and marked as Annexure 3. Ignoring the contentions of the appellant

the respondent issued the impugned order. The respondent failed to exercise its discretion U/s 14B of the Act in the facts and circumstances of the present case. Merely because there is delay in payment of contribution liability to pay damages does not automatically arise.

4. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f. 01.03.1995. The appellant establishment was covered provisionally w.e.f. 05.10.2006 subject to further verification of records. After verification of the books of account of the appellant, it was decided to prepone the coverage to 01.03.1995. The appellant remitted provident fund dues for the period from 03/1995 to 10/2006 and 03/2008 to 06/2009 belatedly on 13.07.2010. When there is delay in remittance of contribution, the appellant is liable to pay damages U/s 14B of the Act. The respondent therefore issued a notice providing an opportunity to the appellant to appear and explain the circumstances that delayed the provident fund contribution. A representative of the appellant attended the proceedings and submitted that the remittance made on 13.07.2010 is the dues for 1995-96 to 2006-07. The only contention raised by the appellant before the respondent authority was that the delay in remittance of contribution was caused due to retrospective coverage of the establishment w.e.f. 21.03.1995. In **Chairman, SEBI Vs Sriram Mutual Fund**,

AIR 2006 SC 2287 the Hon'ble Supreme Court of India held that mensrea is not an essential ingredient for the contravention of the provisions of a civil Act.

5. The appellant establishment is covered under the provisions of the Act w.e.f. 10/2006. According to the learned Counsel for the respondent, the coverage was provisional subject to further verification of records. After verification of the records, the respondent noticed that there was another establishment owned by the appellant already covered under the provisions of the Act and working from the same premises. Accordingly the establishment was finally covered U/s 2A from 03/1995 onwards. The respondent authority also quantified the dues U/s 7A of the Act. The appellant requested for waiver of employees' share of contribution. However the respondent authority did not accept the same. Hence the appellant remitted both the contributions on his own. The respondent thereafter initiated action for assessing damages for belated remittance of contribution. According to the learned Counsel for the appellant, in the circumstances explained above, there is absolutely no mensrea in the belated remittance of contribution. He relied on the decision of the Hon'ble Supreme Court in **McLeod Russell India Ltd Vs RPFC**, 2014 0 AIR (SC) 2573 and also **Management of RSL Textiles Ltd Vs APFC**, Civil Appeal no.96-97/2017. The Hon'ble Supreme Court held that the presence or absence of mensrea or actusreus would be a determinative factor in imposing damages

U/s 14B, as also the quantum thereof since it is not inflexible that 100% of arrears have to be imposed in all the cases. The learned Counsel for the appellant also argued that after introduction of Sec 7Q, Sec 14B of the Act has become a penal provision. In **Hindustan Steels Ltd Vs State of Orissa, 1970 0 AIR SC 253** the Hon'ble Supreme Court 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 be ordinarily be imposed unless the party obliged either acted deliberately or in defiance of law. The learned Counsel for the appellant also relied on the decision of the Division Bench of Hon'ble High Court in **Standard Furniture Vs Registrar, EPF Appellate Tribunal** to argue that the order issued by the respondent authority is a nonspeaking order without any application of mind and the order cannot be sustained.

6. As already discussed in the facts of the case, the appellant establishment is provisionally covered from 10/2006 and later the respondent authority U/s 7A of the Act preponed the coverage to 03/1995. The learned Counsel for the respondent argued that the appellant establishment suppressed the fact that it is a branch unit of another covered establishment. The suppression of fact at the time of coverage is an offence under the provisions of the Act and Schemes and therefore it is not correct to argue that there is no mensrea in belated remittance of contribution. I am unable to agree

with the pleadings of the learned Counsel for the respondent. When the coverage of the appellant establishment is preponed, the appellant establishment is penalised in view of the fact that they cannot recover the employees' share of contribution from the employees. Though the appellant requested for waiver of employees' share of contribution the same was refused by the respondent. The appellant was therefore forced to remit both the shares of contribution. It cannot be assumed that the appellant suppressed the information deliberately to avoid contribution from the due date of coverage, fully knowing the consequences of the same. To that extent it is not possible to find that there was mensrea in belated remittance of contribution by the appellant.

7. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the assessed damages.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer