सत्यमेव जयते

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

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

(Thursday the 15th day of October, 2020)

APPEAL No.243/2018, APPEAL No.224/2019 and APPEAL No.227/2019

Appellant : M/s.Chempaka Kindergarten
"Sthuthi", Divisional Office Road
PMG Junction
Trivandrum - 695033

By Adv.K.K. Premalal

Respondent : The Regional PF Commissioner
EPFO, Regional Office
Thiruvananthapuram - 695004

By Adv.S. Sujin

This case coming up for final hearing on 17.02.2020 and this Tribunal-cum-Labour Court on 15.10.2020 passed the following:

O R D E R

Appeal no.243/2018 is filed from order no.KR/TVM/22092/DAMAGES CELL/2018-19/2794 dt.17.07.2018 assessing damages U/s 14B of EPF & MP Act, 1952 for belated remittance of provident fund contribution for the period from 01.04.2017 to 31.03.2018. The total damages assessed is Rs.10,44,616/-.

2. Appeal no.224/2019 is filed from order no.KR/22092/RO/ TVM/PD/2014/9139 dt.11.02.2015 assessing damages for delayed remittance of provident fund contribution for the months 12/2003, 11/2004, 03/2005, 05/2005 to 12/2005, 01/2006, 2/2006, 03/2007, 04/2007, 6/2007 to 08/2007, 10/2007 to 04/2008, 07/2008 to 09/2008, 11/2008 and 12/2008. The total damages assessed is Rs.87,045/-.

3. Appeal no.227/2019 is filed against order no.KR/22092/RO/ TVM/PD/2014/9143 dt.11.02.2015 assessing damages for belated remittance of provident fund contribution for the period from 01/2009 to 12/2013. The total damages assessed is Rs.1,42,136/-.

4. Since common issues are raised, all these appeals are disposed by a common order.

5. The appellant is a kindergarten and will not come under the definition of educational institution. However the appellant was covered under the provisions of EPF & MP Act and was comply with the Act. The establishment was facing serious financial crisis and therefore delay in payment of provident fund contribution. The appellant received a notice alleging delay in remittance of contribution for the period from 01.04.2017 to 31.03.2018. A delay statement was also enclosed along with the notice. The appellant entered appearance and filed a written statement dt.18.06.2018. Without considering the submissions made by the appellant,

the respondent issued the impugned order. The appellant had no intention to delay the payments. There was no willful default or mensrea in delayed remittance of contribution. In **Employees' State Insurance Corporation Vs HMT Ltd and another**, AIR 2008 SC 1322 the Hon'ble Supreme Court held that existence of mensrea to contravene a statutory provision is also a necessary ingredient for levy of damages. The Hon'ble Supreme Court reiterated the above position in **APFC Vs Management of RSL Textiles India Pvt Ltd**, 2017 (3) SCC 110. The legal position laid down in **Organo Chemical Industries Vs Union of India**, 1979 (4) SCC 573 is no more relevant after introduction of Sec 7Q in the Act.

3. The respondent filed counter denying the above allegations. The respondent denied the allegation that kindergarten will not come under the definition of educational institution. All the employers covered under the provisions of EPF & MP Act, 1952 are liable to remit contribution as per Sec 6(a) of the Act within 15 days of completion of the month. Since there was delay in remittance of contribution by the appellant for the period from 01.04.2017 to 31.03.2018 a notice was issued along with a delay statement furnishing the details of remittance, the due date of remittance, the actual date of remittance, the delay in remittance of contribution and the proposed damages. The appellant was also given an opportunity for personal hearing on 23.05.2018. A representative of the appellant attended

the hearing, admitted the delay and informed that the delay was due to financial difficulties. The delay in remittance of provident fund contribution includes the contribution deducted from the salary of the employees and illegally retained by the appellant. No document to substantiate the claim of financial difficulties was produced before the authority under 14B. In **Chairman, SEBI Vs Sriram Mutual Fund**, (2006) 5 SCC 361 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of the provisions of a civil Act.

4. The only ground pleaded by the learned Counsel for the appellant was that of financial difficulties. On a perusal of the impugned order, it is seen that the appellant failed to produce any documents before the respondent to prove their claim of financial difficulties. No documents are also produced in this appeal to substantiate their claim of financial difficulties. When financial difficulties is not proved the appellant will have to explain the delay in remittance of provident fund contribution. The representative of the respondent submitted that the employees' share of provident fund contribution deduced form the salary of the employees were also not remitted with the respondent in time. Non remittance of employees' share of contribution deducted from the salary of employees is an offence U/s 405/406 IPC. Having committed an offence of breach of trust the appellant cannot plea that there was no mensrea in delayed remittance

of contribution. In **APFC Vs EPF Appellate Tribunal**, 2020 1 LLJ 570(Mad) the Hon'ble High Court of Madras held that

> " Para 12. This being the factum, in the present case on hand, second respondent company has not produced any documents to show that they were declared a sick union under the BIFR Act and therefore, reduction of damages is in violation of Sec 14B itself. The exercise of discretionary power by the Tribunal becomes excessive and under these circumstances, there is no reason whatsoever to reduce the damages imposed by the competent authority under the EPF & MP Act. "

This is a case wherein the EPF Appellate Tribunal reduced the damages assessed by the respondent authority U/s 14B of the Act. Further from the facts of these appeals, it can be seen that appellant is a chronic defaulter and Sec 14B is introduced in the Act to curb such defaulters.

5. Considering all the facts and circumstances of this case, I am not inclined to interfere with the impugned orders.

Hence the appeals are dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer