



सत्यमेव जयते

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

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

(Wednesday the 19th day of February, 2020)

**APPEAL No.253/2018
(Old No.A/KL-31/2017)**

Appellant : M/s.MRV Engineering Enterprises
Murikkanattu
Vadavathoor
Kottayam - 686010

By M/s.Menon & Pai

Respondent : The Assistant PFCommissioner
EPFO, Sub Regional Office
Kochi - 682017

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 21.01.2020 and this Tribunal-cum-Labour Court on 19.02.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/20390/APFC/PENAL DAMAGE/2015/1336 dt.25.07.2016 assessing damages U/s 14B of EPF & MP Act, 1952 for belated remittance of provident fund contribution for the period from 03/2008-4/2012 for the remittances made between 01.12.2007 to 19.12.2014 and also the corrigendum no.KR/KTM/20390/PENAL DAMAGE

1(2)/2016/4043 dt.21.12.2016 revising the damages and also including the 7Q interest for the same period.

2. The appellant herein is the wife of late M.R.Vijayakumar who was the Proprietor of M/s.M.R.V. Engineering Enterprises. The husband of the appellant was engaged in supplying contract labour to various companies and one among them was M/s.MRF Ltd, Vadavathoor. The appellant got an independent code number issued w.e.f. 01.12.2007. The Proprietor of the establishment Sri.M.R. Vijayakumar died on 14.08.2014 following a severe cardiac arrest. The death certificate is produced as Annexure C. The respondent initiated action against M/s.MRF since there was default in payment of provident fund contribution by the contractor. The principle employer M/s.MRF Ltd got Mr.M.R. Vijayakumar also impleaded in the proceedings. The respondent issued orders assessing the dues against the appellant which was challenged by MRF Ltd before EPF Appellate Tribunal as ATA 874(7)/2013. Later the present appellant and wife of late Sri.M.R. Vijayakumar gave an undertaking dt.16.04.2015 that she will remit the provident fund dues in respect of the employees employed by her late husband. Accordingly the appellant remitted the provident fund contribution on 09.05.2015. The respondent thereafter initiated action for assessment of damages for belated remittance of contribution. The respondent authority has imposed penal damages as if it is an inflexible and

rigid formula without taking into account any of the circumstances pleaded before him. The respondent ought to have seen that there was no element of mensrea in belated remittance of contribution in the present case. In **RPFC Vs S.D. College, Hoshiarpur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive penalty altogether, he has the discretion to reduce the percentage of damages. In **RPFC Vs Harrisons Malayalam Ltd**, 2013(3) KLT 790 the Division Bench of the Hon'ble High Court of Kerala held that the authority under 14B has the discretion to decide the quantum of damages and financial difficulties can be one of the criteria that is required to be consider by the authority. As a widow, the appellant had to sell her personal jewellery and also borrow money to settle the provident fund contribution. She is at present working as a part time helper in the laboratory of a private school. The 14B authority ought to have taken these circumstances into account while deciding the quantum of damages.

3. The respondent filed counter denying the above allegations. The appellant delayed remittance of provident fund contribution for the period from 03/2008 to 04/2012 which attracts damages U/s 14B of the Act. The appellant attended the hearing on 17.02.2016 and sought time to explain the delay in remittance of provident fund contribution made on 07.02.2014 and 14.05.2015. Though notice were issued to the principle employer as

well as the appellant, nobody attended the hearing on 04.05.2016, 25.05.2016 and 15.06.2016. Hence on the basis of the available records the respondent issued the impugned order assessing damages to the tune of Rs.7,04,829/- for the period from 03/2008 to 04/2012. It was later noticed that certain belated payments made earlier escaped from the assessment of damages and accordingly the damages was re-assessed as Rs.8,26,995/-. Along with the above corrigendum to correct interest U/s 7Q was also included. There was no averment explaining mitigating circumstances during the relevant period.

4. The case of the appellant is that she was not aware of any of the developments in the appellant establishment when her late husband was running the shop. The appellant was a contractor supplying manpower to various establishments including MRF Ltd. Since the appellant was allotted an independent code number, he was summoned U/s 7A along with the principle employer to remit the defaulting provident fund contribution. Though the default occurred for the period 03/2008 to 04/2012 ie., before the death of the proprietor of the appellant establishment, the proceedings U/s 7A was initiated after his death. At some stage of the proceedings, the present appellant and wife of late Sri.M.R.Vijayakumar committed that she will remit the contribution in respect of the employees and accordingly she remitted the contribution subsequently. Since there was delay in remittance

of contribution, the respondent initiated action for assessment of damages U/s 14B of the Act. On a perusal of the impugned order dt.25.07.2016, it is seen that the appellant attended the hearing but could not furnish any information. It is also seen that the appellant remitted an amount of Rs.2,40,142/- in bulk on 07.02.2014 but the details were not available and hence the appellant was directed to furnish the details. Later it was confirmed that the remittance made on 07.02.2014 actually pertains the period from 06/2010 to 04/2012. Further it was indicated in the impugned order that another bulk remittance of Rs.5,60,331/- dt.14.05.2015 was not included in the original delay statement sent to the appellant. Accordingly the delay statement was revised and a copy of the same was given to both the appellant as well as the principle employer. The enquiry was adjourned to 04.05.2016 and 25.05.2016 and 15.06.2016 to facilitate the appellant to explain the delay. Since there was no representation, the respondent issued an order assessing damages for the period from 03/2008 to 04/2012 totaling Rs.7,04,829/-. Subsequently it is seen that the respondent issued a corrigendum dt.21.12.2016. As per the corrigendum, the respondent received a request dt.16.08.2016 to revise penal damages and interest. It is not clear from the corrigendum why the appellant wanted to revise the penal damages and why the penal damages is further revised upward. According to the corrigendum issued, the penal damages is revised to

Rs.8,26,995/-. This is a completely non speaking order without giving any logic and reason for such a revision. It is not also clear whether the appellant herself had given the request for revision of penal damages or whether the request had come from the principle employer. Though the corrigendum states that reasonable opportunities were afforded, no details are forthcoming in the order. Further and most importantly the respondent failed to indicate the reason and basis for the upward revision of the penal damages. This is a clear violation of principles of natural justice. The appellant has a right to know why and how the damages already assessed under a proper proceedings is revised and on what basis. Having failed to do that, the impugned order dt.21.12.2016 cannot be sustained under law.

5. In view of the facts and circumstances of this case, I m inclined to allow the appeal.

The appeal is allowed, the impugned orders are set aside and the matter is remitted back to the respondent to re-assess the penal damages U/s 14B after issuing a proper notice and revised delay statement to the appellant. The assessment shall be completed within a period of 3 months after the receipt of this order.

Sd/-
(V. Vijaya Kumar)
Presiding Officer