



सत्यमेव जयते

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

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

(Monday the 19th day of October, 2020)

**APPEAL Nos.261/2019, 268/2019,
269/2019 & 270/2019**

- Appellants : 1. M/s.Kannan Devan Hills
Plantations Company Pvt Ltd
Letchmi Estate, Munnar
Idukki – 685612
2. M/s.Madupatty Estate
Kannan Devan Hills Plantations
Mattupatti P.O.
Munnar
Idukki – 6856616
3. M/s. Kannan Devan Hills
Plantations Company Pvt Ltd
KDHP House, Munnar P.O.
Idukki – 685612
4. M/s. Kannan Devan Hills
Plantations Company Pvt Ltd
KDHP House, Munnar P.O.
Idukki – 685612

By Adv.Benny P. Thomas

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 18.03.2020 and this Tribunal-cum-Labour Court on 19.10.2020 passed the following:

ORDER

Appeal no.261/2019 is filed against order no.KR/KTM/123/APFC/ PENAL DAMAGE/14B/2018-19/3297 dt.21.01.2019 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 05/2011 to 02/2017. The remittance period from 30.05.2013 to 30.09.2018. The total damages assessed is Rs.50,522/-.

2. **Appeal no.268/2019** is filed against order no.KR/KTM/366/APFC/ PENAL DAMAGE/14B/2018-19/3653 dt.13.02.2019 assessing damages U/s 14B of the Act for belated remittance of contribution for the period from 05/2009 to 03/2017, remittance period being 18.08.2016 and 03.09.2018. The total damages assessed is Rs.64,565/-.

3. **Appeal no.269/2019** is filed against order no.KR/KTM/20222/APFC/PENAL DAMAGE/14B/2018-19/3647 dt.13.02.2019 assessing damages U/s 14B of the Act for the period from 04/2009 to 10/2016. The remittance period being 13.04.2014 to 31.03.2017. The total damages assessed is Rs.1,04,270/-.

4. **Appeal 270/2019** is filed from order no.KR/KTM/20222/APFC/PENAL DAMGE/14B/2018-19/3655 dt.13.02.2019 assessing damages for the period from 04/2009 to 02/2017. The remittance period being 13.03.2017 to 31.03.2018. The total damages assessed is Rs.1,40,858/-.

5. The appellants in the above appeals are various estates under Kannan Devan Hills Plantation Company Ltd. The appeals raised common questions of law and facts and therefore all the appeals are heard together and disposed of by a common order.

6. The appellant has been paying contribution regularly without any default or delay. The appellant received a notice from the respondent to show cause why damages as envisaged U/s 14B of the Act shall not be recovered from the appellant. The respondent also offered a personal hearing. A representative of the appellant appeared before the respondent along with a defence statement and copies of challans and pointed out that the alleged delay in remittance of contribution was part of the enrolment made as per the Employees Enrolment Campaign 2017. The appellant declared few members and remitted the contribution as required under the Scheme. The remittance was made within the stipulated time of 15 days along with damages and interest and copies of declaration form. Further it was also pointed out by the appellant that the delay of one day alleged in remittance

for the month of 01/2016 was due to technical problems of Employees Provident Fund Organization. The technical problems were also informed to the Regional Provident Fund Commissioner. Hence it is very clear that there was no delay in remittance of contribution for the period from 03/2016 to 11/2016. For the delay in remittance of provident fund contribution for the month of 12/2016 it was explained that the remittance was done within the grace period allowed by the respondent organization. The respondent issued the impugned orders ignoring the contentions of the appellant. There was no deliberate or wilful delay on the part of the appellant in remitting the contribution. In **RPFC Vs SD 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 **Telephone Industries Vs APFC**, W.P.(C) no.32515/2005 the Hon'ble High Court of Kerala held that the authority exercising power U/s 14B has a discretion to decide the quantum of damages and is not bound by the rigid guidelines and formula. In **Harrisons Malayalam Vs RPFC**, 2013 3 KLT 790 the Hon'ble High Court of Kerala held that financial constraints are to be considered for the purpose of delayed payment of contribution.

7. The respondent filed counter denying the allegations in the appeal memorandum. The Employees Enrolment Scheme 2017 was an amnesty

Scheme for employees provident fund defaulters by incorporating Para 82A of EPF Scheme to provide an opportunity to the employers to voluntarily come forward and declare the details of all non-enrolled employees who were entitled for provident fund membership between 01.04.2009 to 31.12.2016. The Scheme was enforced between 01.01.2017 to 31.03.2017 and further extended till 30.06.2017. As per Para 82A (2) the employer was required to furnish a declaration in a specified form in respect of employees who were entitled to become the members of the fund from their date of eligibility. As per Para 82A (3) once the declaration is furnished, the employer is required to remit the employer's share of provident fund contribution payable in accordance with the provisions of the Scheme and the employees' contribution deducted from the employees' wages along with interest payable in accordance with 7Q of the Act and a nominal damage of Rs.1/-per annum within 15 days of furnishing the declaration. If the remittance are not made within 15 days the declaration will become invalid. The incentives for the employers opting to enroll employees under the Scheme included waiver of employees' share of contribution, provided the same has not been deducted from the wages of employees, waiver of administrative charges and reduction of damages to Rs.1/- per annum. However as per Para 82A(6), if the employer fails to pay the contribution, interest and damages as pointed out

above, within 15 days of making the declaration such declaration shall be deemed to have not be made by such employer under this Scheme. The true copies of the notifications are marked as Annexure R1-R6. The respondent denied the averment of the appellant that the remittances were made on time. The appellant failed to remit the damages and interest within the stipulated time and thereby loosing the benefit under the campaign. The respondent also denied the allegation that the appellant could not remit the contribution in time due to some technical problem in the EPFO system from 14.02.2016 onwards. The respondent produced the details of various remittance made on 15.02.2016 as Exbt.R6 series to prove that there was no technical problem with the EPFO system. The grace period of 5 days given for remittance of provident fund contribution was withdrawn vide Circular dt.08.01.2016 which is produced and marked as Annexure R7. Having failed to meet the requirements of Employees Enrollment Campaign 2017, the appellant is not entitled for any incentives provided under that Scheme and therefore is liable for damages as per the provisions of Sec 14B read with Para 32A of the Scheme. The Hon'ble Supreme Court in **Chairman, SEBI Vs Sriram Mutual Fund**, (2006) 5 SCC 361 held that mensrea is not an essential ingredient for contravention of the provisions of a civil law.

8. The learned Counsel for the appellant raised certain issues which are required to be answered for a final decision in the appeal. The 1st issue raised by the learned Counsel for the appellant is that the appellant is entitled for the benefits of Employees Enrolment Campaign 2017. The learned Counsel for the respondent argued that the appellant is not entitled for the benefits under the EEC 2017 as the appellant failed to comply with the stipulations under the scheme provision. It is seen that as per Annexure R1, Govt of India introduced para 82A in EPF Scheme for the introduction of a scheme called EEC 2017. As per the EEC Scheme which was an amnesty Scheme for EPF defaulters provided an opportunity to employers who failed to enrol all their eligible employees to provident fund to voluntarily come forward and declare the details of such non enrolled employees who are entitled for provident fund membership from 01.04.2009-31.12.2016. The scheme was in force from 01.01.2017-31.03.2017 and was further extended till 30.06.2017. Under para 82A(2) the employers are required to furnish a declaration in a prescribed proforma in respect of the employees who were required to be enrolled from the due date. As per para 82A (3) the employer is required to remit the employees provident fund contribution along with employees contribution deducted from the employees along with interest payable in accordance with Sec 7Q of the Act and damages of Rs.1/- per annum **"within 15 days of**

furnishing the declaration." Hence the scheme provision mandates a time stipulation of 15 days from the date of filing the declaration to remit the contribution, interest U/s 7Q and also damages as prescribed under EEC 2017. As per para 82A(6) if the employer fails to pay within 15 days of the date of making the declaration, the dues, interest and damages such declaration shall be deemed to be invalid and deemed not to have made any such declaration by such employer. The incentives given to the employer to be part of EEC 2017 is that;

- Employees' share of provident fund contribution waived provided the same is not deducted from the salary of the employees.
- The damages u/s 14B is restricted to rs.1/- per annum.
- Administrative charges are totally waived.

In the present case, according to the learned Counsel for the appellant, the appellant declares some employees under the EEC 2017 on 27.05.2017 and remitted the dues between 01.06.2017 and 04.06.2017. The learned Counsel for the respondent categorically denied the above claim of the appellant and submitted that the appellant remitted the contribution in time whereas they failed to remit the damages and interest U/s 7Q as stipulated under EEC 2017 within the stipulated time of 15 days. The declaration is made on 27.05.2017 whereas the damages were paid on 19.07.2017 and the interest was paid on

19.07.2017 and 28.11.2018. As already discussed, the EEC 2017 scheme makes it mandatory that the appellant should pay the contribution along with damages and interest U/s 7Q within a period of 15 days from the date of the declaration. The EEC 2017 very clearly mandates that " If the employer fails to remit the contribution, interest and damages payable by him as referred to in sub para 3, then, the declaration sent by the employer under sub para 2 shall be deemed to have not be made by such employer under the scheme ". Having failed to remit the contribution, damages and interest within the stipulated time, the appellants cannot claim the incentives given under EEC 2017 scheme.

9. Another issue raised by the learned Counsel for the appellant that the contribution for the month 01/2016 amounting to Rs.24,47,434/- could not be remitted on time as the EPFO site was having some technical problems and was not accepting any payment from 14.02.2016-15.02.2016. The allegation that the EPFO site was having some technical problem and it was not possible to remit the contribution on 14.02.2016 and 15.02.2016 was strongly contested by the Counsel for the respondent. The respondent produced R6 series of challans to substantiate their claim that payments were made through the EPFO system on 15.02.2016. The Annexure R6 series are challans of various establishments having remitted contribution through the EPFO

system on 15.02.2016. Hence it is not possible to accept the claim of the appellant that the remittance for the month of 01/2016 could not be made in time because of some technical problems in EPFO site.

10. According to the learned Counsel for the appellant the contribution for the month of 12/2016 was made on 16.01.2017 and since there is a grace period allowed for 5 days, there is no delay in remittance attracting damages for the remittance of Rs.26,69,750/- made on 16.01.2017. According to the Learned Counsel for the respondent the concept of grace period was withdrawn vide Circular dt.08.01.2016 and any delay in payment made after 15th of the next month from the month 2/2016 will attract damages. As per para 38(1) of EPF Scheme 1952, para 3 of Employees Pension Scheme 1995 and para 8(1) of EDLI Scheme 1976 the employers are required to pay the contribution and administrative charges within 15 days of close of every month. As per Para 5.1.3 of Manual of Accounting Procedure (Part 1 General) the employers were given a grace period of 5 days to remit the contribution. The above facility is withdrawn vide circular no. WSU/9(1)/2013/Settlement/35631 dt.08.01.2016 since electronic challan-cum-return was introduced in EPFO. Hence the appellant is not entitled for any grace period for the remittance made on 16.01.2017.

11. The learned Counsel for the appellant pointed out that there was no intentional delay on the part of the appellant in delayed remittance of contribution and therefore there is no element of mensrea in such delayed contribution. The appellant is a co-operative of employees formed for the welfare of its employees. It is true that the statue provides for a time limit of 15 days from the close of the month to remit the provident fund contribution with the respondent. The salaries of the employees are paid on the last working day or the first working day of the next month. The employees' share of contribution is also being deducted from the salary of the employees. As already pointed out the total average contribution being paid by the appellant is around 25 lacs and 50% of that amount is the contribution deducted from the salary of the employees. It is not clear as to why the appellant should wait till 15th of next month to make the contribution when this huge amount belonging to the employees is already lying with them. If the answer of the appellant is that the statue allows them to remit the contribution by 15th of next month, they are also taking the risk of delayed remittance of contribution if by some chance the remittance could not be made on 15th. However in the facts of these appeals, it is difficult to accept the pleadings of the learned Counsel for the respondent that the delay in remittance of provident fund contribution was intentional and there was an element of mensrea. The

contribution in respect of the EEC 2017 scheme was made in time but they did not remit the damages and interest within the time provided under the scheme. Hence technically they cannot claim any benefit under the scheme provisions. Having declared the name of some employees to be enrolled under the scheme and having remits the employer's share of contribution in time, it is not possible to accept the plea that they intentionally delayed the remittance of damages and interest. Similarly the delay in remittance for the other months also cannot be attributed with intentional delay warranting a levy of maximum damages as provided under para 32A of EPF Scheme.

12. Considering all the facts, circumstances, evidence and pleadings in these appeals, I am inclined to hold that interest of justice will be met if the appellants are direct to remit 70% of the damages assessed as per the impugned orders.

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

Sd/-
(V. Vijaya Kumar)
Presiding Officer