



सत्यमेव जयते

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

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

(Thursday the 22nd day of October, 2020)

APPEAL No.377/2019

Appellant : M/s.The Kerala Minerals & Metals Ltd
Sankaramangalam
Chavara
Kollam - 691583

By M/s.B.S.Krishnan Associates

Respondent : The Regional PF Commissioner
EPFO, Regional Office
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &
Megha A.

This case coming up for final hearing on 11.03.2020 and this Tribunal-cum-Labour Court on 22.10.2020 passed the following:

ORDER

Present appeal is filed against order no.KR/KLM/10315/PD/2018-19/615 dt.25.07.2019 assessing damages U/s 14B of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 07/2014 to 11/2015. The delay in remittance was due to

the retrospective payment of dearness allowance arrears to its employees by the appellant. The total damages assessed is Rs.1,34,950/-.

2. The appellant is a Govt company registered under Companies Act, 1956. The appellant is covered under the provisions of the Act. Out of the 3 Schemes under the Act, the company is exempted from EPF and EDLI Schemes as they are having separate schemes of their own. The appellant has opted for Employees Pension Scheme from 1995.

3. The dearness allowance in respect of the appellant is released only after the approval by the Govt of Kerala. Hence it is always implemented retrospectively. The dearness allowance w.e.f. 01.07.2014 was revised as per G.O. dt.07.02.2015 which is marked as Annexure 1. The dearness allowance w.e.f. 01.01.2015 was revised by the Govt as per Annexure 2 G.O. dt.07.08.2015. The pension contribution for the period from 07/2014 to 03/2015 was paid on 20.05.2015 and the dearness allowance arrears for the period from 01/2015 to 11/2015 was paid on 12.02.2016. The revised dearness allowance can be paid only when the necessary orders are issued by the Govt and an appropriate decision has taken by the appellant company. The respondent issued a notice dt.19.02.2019 directing the appellant to show cause why damages shall not be levied for belated remittance of contribution. A representative of the appellant appeared before the respondent and

explained that there is no delay involved as the contribution was made immediately on release of the dearness allowance arrears as per the G.Os' issued by the Govt of Kerala. It was also brought to the notice of the respondent the decision of the Hon'ble High Court of Kerala in W.P.(C) no.14294/2015 issued in similar situation. It is settled law that the power U/s 14B of the Act is quasi criminal and therefore existence of mensrea is a relevant factor to be considered while imposing damages. The Hon'ble High Court of Kerala in **RPFC Vs Harrison's Malayalam Ltd**, 2013 3 KLT 790 held that the existence of mensrea is a relevant consideration while imposing damages. The Hon'ble Supreme Court in **McLeod Russell India Ltd Vs RPFC**, 2014 (15) SCC 263 and in **APFC, EPFO Vs RSL Textiles India Pvt Ltd**, Civil Appeal no.96-97/2017 held that mensrea is a relevant consideration while levying damages U/s 14 B of the Act.

4. According to the respondent the appellant failed to remit contribution from 04/2014 to 03/2016 in time which attracted damages U/s 14B of the Act. Hence a notice dt.19.02.2019 was issued to the appellant to show cause why damages shall not be levied for belated remittance of contribution. The appellant was also given an opportunity for personal hearing on 27.02.2019. An authorised representative of the appellant attended the hearing and submitted that the contribution was made through

a single challan in April 2015 which pertains to the dearness allowance arrears from 07/2014 to 03/2015. Subsequently split challans were submitted to account month wise remittances. Similarly the appellant submitted challans from 01/2015 to 11/2015 which pertained to dearness allowance arrears for 01/2015 to 06/2015. They also submitted that the dearness allowance arrears were paid to the employees with retrospective effect as and when the Govt order is released. On the basis of the submissions made by the representative of the appellant, a revised statement was sent to the appellant and was also provided an opportunity to appear in person on 17.07.2019. After affording adequate opportunity the respondent issued the impugned order.

5. The appellant establishment was granted exemption by respondent to manage their own provident fund trust and also approved an insurance scheme in lieu of EDLI Scheme. Therefore the appellant complied with the respondent only with regard to Employees Pension Scheme, 1995.

6. The dearness allowance of the employees of the appellant establishment w.e.f. 01.07.2014 was revised by the Govt as per G.O. dt.07.02.2015 produced and marked as Annexure A1. Similarly the dearness allowance w.e.f. 01.01.2015 was revised by the Govt vide G.O. dt. 07.08.2015

which is produced and marked as Annexure A2. However the contribution in respect of dearness allowance for the period from 07/2014 to 03/2015 was paid on 20.05.2015 and the dearness allowance arrears for the period from 01/2015 to 11/2015 was paid on 12.02.2016. There was a delay of 3 to 4 months in remittance of provident fund contribution in respect of dearness allowance arrears even after the Govt approvals are received.

7. The learned Counsel for the appellant pointed out that there was no mensrea in belated remittance of contribution. Further he also pointed out that there was a dispute regarding the earlier pay revision and connected assessment of damages U/s 14B of the Act and the matter was finally decided by the Hon'ble High Court of Kerala in W.P.(C) no. 14294/2015 in favour of the appellant on the question of damages. The learned Counsel relied on the decision to argue that there is no mensrea in belated remittance of contribution as the dearness allowance arrears can be released only after getting the approval from Govt and there is liable to be delay in getting the approval from Govt. In W.P.(C) no.14294/2015 the Hon'ble High Court considered the arrears on pay revision which happens every 4/5 years and the Hon'ble High Court also found that the contribution was paid immediately after the approval by the Govt. In this particular case the issue is regarding

dearness allowance arrears which is being paid every 6 month and it is seen that there was delay in remittance of contribution even after getting the approval from the Govt. The approval for dearness allowance from 07/2014 to 03/2015 was received on 07.02.2015 whereas the contribution is paid only on 20.05.2015. Similarly the dearness allowance approval for the period from 01/2015 was received on 07.08.2015 whereas the contribution was paid only on 12.02.2016. As rightly pointed out by the learned Counsel for the appellant no mensrea can be alleged against the appellant in the facts and circumstances of this case. However the delay in remitting the contribution even after receiving the approval from the Govt of Kerala is to be considered while deciding the appeal. The learned Counsel for the respondent elaborately argued the consequences of delayed remittance of contribution into the Pension Fund, which is a pooled fund. According to him Employees Pension Scheme, 1995 is a contributory scheme and is already running in deficit as per the last actual valuation. Hence any delay in remittance of contribution into the Pension Fund is going to affect the very viability of the fund.

8. Considering the facts and circumstances of the case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 50% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 50% of the damages assessed U/s 14B of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer