

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

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

(Tuesday the 2nd day of November, 2021)

APPEAL No.438/2019

(Old no.37(7)2016)

Appellant : M/s.C.K.Velappan

Rajakkadu Estate

Rajakkadu

Idukki - 685566

By Adv.P.S.Michael

Respondent : The Assistant PF Commissioner

EPFO, Sub Regional Office

Thirunakkara

Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 28.07.2021 and this Industrial Tribunal-cum-Labour Court on 02.11.2021 passed the following:

ORDER

Present appeal is filed against order no.KR/KTM/5239-K/APFC/PENAL DAMAGE/2014/10709 dt.19.11.2015 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 06/2009 to 10/2010, 01/2011 to 03/2011,

02/2012, 05/2012, 09/2013, 10/2013, 02/2014, 05/2014 and 09/2014. The total damages assessed is Rs.26,105/-.

The appellant is a cardamom estate and it was covered under the 2. provisions of the Act. The original owner of the appellant establishment was suffering continuous loss and he sold the estate to different parties. The appellant purchased a portion of the said estate in the year 2002. Before the purchase, the original management settled the labour claims of the employees vide a settlement dt.30.12.2000. Upto 2007, there was no work in the estate and the same remained closed. In the year 2009, the appellant appointed some workers and Provident Fund Enforcement Officer issued notice dt.01.06.2009. The Enforcement Officer was appraised of the change in ownership and therefore the appellant applied for allotment for separate code number vide letter dt.30.06.2009, a copy of which is marked as Annexure 3. The Enforcement Officer conducted detailed enquiry and on the basis of his report, separate code numbers were allotted to bifurcated estates as evidence by In a subsequent proceedings the owners of the fragmented Annexure 5. estates including the appellant were directed to deposit the provident fund dues upto 10/2010. The appellant remitted his share of contribution through DD which is evidenced by Annexure 6. The appellant was also allowed to file fresh Form 9 which is produced and marked as Annexure 7. The appellant

received a notice dt.30.12.2014 to show cause why damages shall not be levied for belated remittance of contribution. A copy of the said notice is produced as Annexure 8. A representative of the appellant attended the and submitted that the contribution was remitted with a clear hearing understanding that there will be no further action after remittance of contribution. Ignoring the contentions of the appellant, the respondent issued the impugned order. The appellant filed a detailed representation dt.28.09.2015 which is produced and marked as Annexure 9. The respondent authority failed to exercise his discretion U/s 14B of the Act and Para 32A of EPF Scheme. The respondent authority ought to have seen that the delay in remittance of contribution was due to the delay in allotment of separate code number. There was a delay of 14 months in allotting a separate code number to the appellant establishment. The respondent authority failed to consider the law laid down by various High Courts and also Hon'ble Supreme Court regarding levy of damages U/s 14B of the Act.

3. The respondent filed reply denying the above allegations. The appellant is one of the purchasers of Rajakkadu Estate, a cardamom plantation and started agriculture activities in his portion in 2007. Rajakkadu Estate was covered under the provisions of the Act w.e.f. 28.11.2002. On the request of the appellant, a separate code number was allotted to the appellant on 28.04.2011

for the sake of administrative convenience. Allotting a separate code number U/s 2A will not affect the date of original coverage of the establishment nor entail any ground for taking it as a separate entity. The appellant ought to have started compliance immediately after re-opening the estate in 2007. Since the defaulted, an enquiry U/s 7A was initiated and contribution upto appellant 2010 was assessed and recovered from the appellant establishment. Since there was delay in remittance, an enquiry U/s 14B was initiated. The contention of the appellant that a separate code number was issued only on 28.04.2011 and penal damages ought not be levied prior to that period has no basis in law. The statutory liability to remit contribution does not start from the allotment of provident fund code number. It starts from the date the appellant becomes statutorily coverable. When there is delay in establishment remittance of contribution the appellant is liable to pay damages for belated remittance of contribution. The Hon'ble High Court of Kerala in Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC, 1982 LAB IC 1422 held that Para 38 of EPF Scheme obliges the employer to make payment within 15 days of close of every month and Para 30 of the Scheme cast an obligation on the employer to pay both the contribution payable by himself and on behalf of the members employed by him in the first instance. The Hon'ble Supreme Court of India in Organo Chemical Industries Vs UOI, 1979 LAB IC 1261 held that Sec 14B is

meant to penalise a defaulting employer. There is nothing in the Section to show that damages must bear relationship to the loss which is caused to the beneficiaries under the Scheme.

4. The appellant owns a bifurcated portion of Rajakkadu Estate which was covered under the provisions of the Act. According to the appellant, he purchased a portion of Rajakkadu Estate in the year 2002. He started agricultural activities in the year 2007. On his request, the respondent authority issued a sub code number for administrative convenience. Further the appellant states that the delay in remittance was due to the fact that there was delay in allotting sub code number to the appellant establishment. that though there was full fledged activity from 2009, the appellant failed to remit the contribution. Accordingly the respondent authority initiated action U/s 7A of the Act, quantified the dues and recovered the same. Apart from this there is further delay in remittance of contribution for the period from 01/2011 to 03/2011, 02/2012, 05/2012, 09/2013, 10/2013, 02/2014, 05/2014, 09/2014. Though the appellant claims that the initial delay in remittance of contribution was due to the delay in allotment of sub code number, no explanation is offered for further delay in remittance of contribution. The delay in contribution for the period upto 10/2010 can be attributed to a bonafide belief that contribution can only be remitted on allotment of a sub code number. However the further

delay from 01/2011 onwards cannot be justified on that ground. Delay in remittance of contribution from 01/2011 onwards will have an element of mensrea as the appellant deliberately violated the provisions of the Act.

- 5. Considering the fact that the appellant establishment is a portion of a covered Cardamom Plantation which remained closed from 2000 and subsequently purchased by the appellant in the year 2002 and the appellant started the activity only from 2007 and regular employees were engaged only from 2009, the appellant can be given some accommodation in damages U/s 14B of the Act. Though the initial delay can be explained away by stating that there was delay in allotment of sub code number, the subsequent periods of delay in remittance of contribution will definitely amount to intentional delay as no proper explanation is offered by the appellant.
- 6. Considering all the facts, circumstances and pleadings, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 80% of the damages U/s 14B of the Act.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 80% of the damages assessed as per the impugned order.

Sd/-

(V. Vijaya Kumar) Presiding Officer