



सत्यमेव जयते

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

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

(Friday the 23rd day of October, 2020)

APPEAL No.71/2019

Appellant : M/s.Vettoor Construction
Engineers Pvt Ltd
Vettoor Centre, T.B. Road
Kottayam - 686001

By M/s.Ashok B. Shenoy

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

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 10.03.2020 and this Tribunal-cum-Labour Court on 23.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/10194/APFC/Penal Damage/14B/2018-19/2617 dt.05.12.2018 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 09/2014 to 02/2018. The total damages assessed is Rs.1,80,013/-. The interest demanded U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a construction company involved in civil construction and infrastructure development. In January 2017 Govt of India notified a scheme called Employees Enrollment Campaign 2017 (EEC 2017). A copy of the notice issued by the respondent notifying the scheme to the appellant is produced and marked as Annexure A1. Pursuant to the aforesaid EEC 2017, the appellant enrolled non enrolled eligible employees who worked in the service of the appellant for the period from 01.09.2014 to 28.02.2017 and remitted their contribution for the said period. The appellant received a notice dt.19.10.2018 proposing to levy damages in relation to the aforesaid payments in respect of non enrolled eligible employees enrolled in the terms of EEC 2017. In response to the notice the appellant filed a written statement, objecting to levy of damages contenting that having collected the contribution under EEC 2017, it is not justifiable to levy damages at the rate exceeding Rs.1/- per annum specified in the scheme. True copy of the written statement is produced and marked as Annexure A3. During the course of hearing, the appellant also submitted that due to poor financial conditions and financial difficulties because of general slow down in the

industry there was some delay in payment of contribution. The delay was not deliberate, intentional, malafide or wilful. Without considering any of the contentions made by the appellant, the respondent issued the impugned order assessing damages to the tune of Rs.1,80,013/-. The impugned order is bad in law as the respondent is not an authorised officer U/s 14B of the Act. Having accepted the declaration filed under the EEC scheme and the payment of dues in respect of those declared employees, it is not fair on the part of the respondent to say that they are liable to pay damages at a rate exceeding the rate prescribed by the notification. It is a settled legal position that while determining the quantum of damages the assessing authority shall make an objective consideration depending upon the facts and circumstances of each case and shall not rely on the calculation table available to the respondent. Going para 38 of the EPF Scheme, contributions are payable only within 15 days of the close of every month in which wages are paid and deduction towards contribution is made. The calculation in the delay statement provided to the appellant is not as per the provisions of Para 38. The appellant was also not provided the grace period of 5 days provided under circular dt.19.03.1964 and 24.10.1973.

3. The respondent filed counter denying the above allegations in the appeal memo. The appellant produced orders passed U/s 14B and Sec 7Q

and marked them as Annexure A4 though they are separate orders. The order issued U/s 7Q is not appealable and to that extent the challenge against 7Q order is to be dismissed as not maintainable.

4. EEC 2017 was an amnesty scheme for EPF defaulters by Ministry of Labour and Employment, Govt of India by incorporating Para 82A in Employees Provident Fund Scheme, 1952 to provide an opportunity to such employers to voluntarily come forward and declared details of all non enrolled employees who were entitled for provident fund membership between 01.04.2009 to 31.12.2016 but could not be enrolled for some reason. The scheme was in force between 01.01.2017 to 31.03.2017 and further extended till 31.06.2017. Under Para 82A(2) the employer was required to furnish a declaration in a specified form in respect of employees who are required or entitled to become members of the Fund along with date of eligibility for their membership. As per Para 82A(3), once the declaration is furnished the employer is required to remit the employer's share of contribution along with interest payable in accordance with Sec 7Q and nominal damages of Rs.1/- per annum within 15 days of furnishing the declaration, for the declaration to be valid. Thereafter the employer is required to file a return in the prescribed form. The incentive for the employers under the scheme included waiver of employees' share of contribution provide the same was not 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 within 15 days of the date of furnishing the declaration, the dues, interest and damages payable by them in respect of the declaration such declaration shall be deemed to be invalid. A true copy of the notification G.S.R.1190(E) issued by Ministry of Labour & Employment, Govt of India is produced and marked as Annexure R1. The scheme was extended upto 30.06.2017 vide notification no.G.S.R.298(E) dt.29.03.2017. A copy of the same is produced and marked as Annexure R6. The appellant wilfully suppressed the date on which he filed the declaration under the enrollment campaign. The appellant filed the declaration on 23.03.2017 but failed to remit the penal damages and 7Q interest within 15 days i.e., on or before 07.04.2017, from the date of submission of the declaration, rendering the declaration invalid. The impugned order was issued after considering all the submissions made by the appellant and also after taking into account the legal provisions as discussed above. The acceptance of dues remitted pursuant to the declaration does not mean automatic conferment of benefits under the campaign unless all the conditions stipulated under the scheme are complied with. The appellant failed to comply with the terms of the scheme which rendered him ineligible to the benefits of the campaign. The impugned

order is issued strictly in compliance with the scheme provisions and no mistake in the calculation was pointed out by the appellant before the respondent authority. The appellant cannot choose to pay wages as and when it chooses and expect the statutory obligation to change as per the appellant's whims. The contribution is payable under Para 38 of EPF Scheme within 15 days of close of every month and not as and when the employer chooses to pay wages. The Hon'ble High Court of Kerala in **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFCL**, 1982 1 LLJ 440 (Kerala) held that Para 38 of EPF Scheme obliges the employer to make payments within 15 days of the 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 employees employed by him in the first instance. In this case the appellant has not produced any record to establish the dates on which the wages were actually paid and no such plea was raised before the respondent authority during the enquiry. The grace period of 5 days granted as per circular dt.19.03.1964 was withdrawn vide circular dt.08.01.2016 stating that the grace period of 5 days for payment of contribution has been removed w.e.f. February 2016. A true copy of the circular dt. 08.01.2016 is produced and marked as Annexure R7.

5. One of the main contentions raised by the learned Counsel for the appellant was that the payments made during EEC 2017 will attract damages only at the rate of Rs.1/- per annum. The learned Counsel for the respondent has elaborately discussed the provision of EEC 2017 which is brought in by introducing Para 82A in EPF Scheme 1952. As per this scheme the employers are given liberty to declare the non enrolled employees for the period from 04/2009 to 12/2016 through a declaration form specifically designed for the same. As per Para 82A(3) the employer shall remit the employer's share of contribution and employees' share of contribution deducted from the employees wages along with interest U/s 7Q of the Act and the damages specified in this Scheme. As per para 82A(6)

“ If the employer fails to remit the contribution, interest and damages payable by him as referred to in Para 3, then the declaration sent by the employer under sub Para 2 shall be deemed to have not be made such employer under the Scheme “.

The incentives provided to the employers for availing the scheme provisions were ;

- (1) They need to pay only the employer's share of contribution if the employees' share of contribution is not deducted from the salary of the employees.

(2) The employer need not pay any administrative charges.

(3) The employer is liable to pay only Rs.1/- per annum as damages.

To avail these benefits the appellant should have complied with the requirements under the scheme as detailed above. As pointed out by the learned Counsel for the respondent, the appellant filed his declaration on 23.03.2017 and he is required to pay the contribution, interest and damages as specified in the scheme on or before 07.04.2017. The appellant has no case that they remitted the interest and damages before 07.04.2017. Hence as per sub Para 82A(6), the declaration submitted by the appellant became invalid and he cannot claim any benefits under that scheme.

6. The learned Counsel for the appellant pointed out that the delay in remittance shall be calculated only after the wages are paid to the employees. This is a settled legal position that as per Para 30 of the Scheme, the employers are liable to pay both shares of contribution irrespective of the fact whether the salary is paid or not. The learned Counsel for the appellant also pointed out that the method of calculating damages adopted by the respondent is not correct. It is pointed out that no such issue was raised before the 14B authority and no finding is rendered by the respondent and the same cannot be raised for the first time in this appeal. The learned Counsel for the appellant also argued that he was entitled to a grace period of 5 days as per

the circular dt. 19.03.1964. The learned Counsel for the respondent however pointed out that in view of the changes made in remittance of contribution, the grace period granted for remittance of contribution beyond 15th of the next month is withdrawn by Annexure R7 circular.

7. The learned Counsel for the appellant argued that the appellant was under severe financial constrains during the relevant point of time. However no documentary evidence is produced by the appellant to substantiate the claim of financial difficulties. However it is felt that the claim of the learned Counsel for the appellant that there was no intentional delay in remittance of contribution is required to be considered in the facts and circumstances of this case. The learned Counsel for the respondent submitted that the non enrollment of employees itself was in violation of provisions of Act and the Schemes and the appellant is not entitled for any relief in damages. However it is felt that the appellant has availed the provisions of the EEC scheme to enrol the non enrolled employees and it is difficult to accept the plea that non remittance of damages at the rate of Rs.1/- per annum and interest U/s 7Q, were deliberate. It is rather difficult to attribute any mensrea in delayed or non remittance of interest and damages under EEC 2017.

8. Considering the facts and circumstances of this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed as per Sec 14B of the Act.

9. The learned Counsel for the respondent pointed out that no appeal can be filed against an order issued U/s 7Q of the Act. Sec 7(I) of the Act do not specify any appeal from an order issued U/s 7Q. The Hon'ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against 7Q order. The Hon'ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. Hence appeal against Sec 7Q order is not maintainable.

Hence the appeal against the order issued U/s 14B is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer