



सत्यमेव जयते

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

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

(Friday the 12th day of March, 2021)

APPEAL No.772/2019

Appellant : M/s.Sabarigiri Residential School
Anchal
Kollam - 691306

By Adv.Ajith S. Nair

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 11.02.2021 and this Tribunal-cum-Labour Court on 12.03.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KLM/12207/PD/2019-20/1019 dt.24.09.2019 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 09/2014 to 02/2019. The total damages assessed is Rs. 15,32,668/-.

2. The appellant is a school affiliated to CBSE. The appellant is complying with the provisions of the Act. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment on 03.10.2016. The appellant was provided with a copy of the inspection report dt.07.04.2017 alleging non remittance of contribution in respect of non enrolled employees for the period from 06/2014 to 09/2016. The alleged non enrolled employees were part time teachers and employees. They were not employees coming within the definition of 'employee' under the provisions of the Act. The respondent initiated an enquiry U/s 7A and the appellant agreed to enroll all those employees. A daily order sheet dt.30.05.2018 is produced and marked as Annexure A3. The respondent thereafter issued an order assessing the dues as per Annexure A4. The appellant remitted the dues as committed during the course of 7A enquiry. The appellant received a notice dt.09.04.2019 alleging delay in remittance and proposing to levy damages and interest. A copy of the email communication dt.09.04.2019 is produced and marked as Annexure A5. The appellant remitted the interest U/s 7Q of the Act. In response to the notice, a representative of the appellant attended the hearing on 29.08.2019 and pointed out the financial difficulties of the appellant and also the circumstances which led to the delay in remittance of contribution. Without appreciating the facts and circumstances, the

respondent issued the impugned order. The financial difficulties pleaded by the appellant was admitted by the respondent and in such circumstances the respondent ought to have reduced or waived the damages especially when there is no finding to the effect that there is wilful latches on the part of the appellant. The respondent ought to have seen that there was no mensrea in belated remittance of contribution.

3. The respondent filed counter denying the above allegations. The appellant failed to remit statutory contribution for the period from 09/2014 to 02/2019 in time. This will attract damages U/s 14B and also interest U/s 7Q of the Act. Hence the appellant was informed through mail that they are liable to remit the damages and interest, the details of which are available in their login. Since the appellant failed to remit the contribution, a registered notice dt.02.08.2019 was issued to the appellant showing the details of the amount due, due date of payment, actual date of payment and period of delay committed by the appellant. The appellant was also given an opportunity on 29.08.2019 to appear before the respondent authority and offer his explanations for delayed remittance of contribution. A representative of the appellant appeared in the enquiry. The representative filed a letter dt.19.08.2019 furnishing details of some remittance made against 14B/7Q. The appellant also submitted that the appellant remitted the interest

demanded U/s 7Q of the Act. The appellant also remitted the damages for belated remittance of contribution for the months 08/2018, 12/2018 and 02/2019. The appellant also pleaded that they are facing acute financial crisis and therefore further damages may be waived. After considering the pleadings of the appellant, the respondent issued the impugned order. It is true that there was an enquiry U/s 7A of the Act for non enrolment of part time employees which culminated in an assessment order dt.02.08.2018. The only ground pleaded by the appellant before the respondent authority for reducing damages was the financial stringencies of the appellant establishment. The appellant failed to produce any documents to substantiate their claim of financial difficulties. In **Elsons Cotton Mills Vs RPFC**, 2001 (1) SCT 1104 (P&H) (DB) the Hon'ble High Court of Punjab and Haryana rejected the claim of financial stringencies as a ground for delayed remittance of contribution. In **Steel Tubes of India Ltd Vs APFC** 2012 (132) FLR 1057 the Hon'ble High Court of Madhya Pradesh held that there is no provision where under the explanation of delay of payment of amounts, due to financial difficulties as offered by the establishment can be a ground to reduce penalty. In **Sky Machinery Ltd Vs RPFC** 1998 LLR 925 the Hon'ble High Court of Orissa held that financial crunch will not be sufficient for waiving penal damages for delay in depositing the provident fund contribution.

4. According to the learned Counsel for the appellant, there was delay in remittance of contribution because of an assessment U/s 7A of the Act of the contribution with regard to the non enrolled part time employees. According to him the appellant was under the bonafide belief that the part time employees are not eligible to be enrolled to provident fund. However during the inspection by an Enforcement Officer of the respondent, it was pointed out that they are liable to pay contribution with respect to wages paid to the part time employees also. The appellant took a decision to enrol all the part time employees. In the enquiry initiated U/s 7A of the Act, the appellant committed that the contribution in respect of part time employees for the period from 06/2014 to 09/2016 will be remitted by the appellant. As committed during the 7A enquiry, the appellant enrolled all the part time employees and remitted the contribution from the due date of eligibility. According to the learned Counsel for the respondent, non enrollment of part time employees was violation of statutory provisions and therefore the appellant cannot plead that there was no intentional delay. There was also mensrea in belated remittance of contribution. On a perusal of the delay statement enclosed along with Annexure A6, it is seen that the delay in remittance varies from 580 days to 1391. Admittedly the interest paid U/s 7Q of the Act will not be adequate to pay interest to the employees on a

cumulative basis when there is huge delay. Hence the appellant is liable to compensate the loss of interest when there is huge delay in remittance of contribution. The learned Counsel for the appellant pleaded that the delay in remittance of contribution was also due to financial difficulties. The appellant failed to produce any documents to support the claim of financial difficulties before the respondent authority as well as in this appeal. In **M/s.Kee Pharma Ltd Vs APFC**, 2017 LLR 871 the Hon'ble High Court of Delhi held that the employers will have to substantiate their claim of financial difficulties if they want to claim any relief in the levy of penal damages U/s 14B of the Act. In **M/s.Sreekamakshi Agency Pvt Ltd Vs EPF Appellate Tribunal**, W.P.(C)no. 10181/2010 the Hon'ble High Court of Kerala held that " if it is shown that one was under severe financial constraints on account of reasons stated and **the documents in support of the said fact is produced**, the authorities are bound to consider the same in a pragmatic manner and not taking a pedantic approach ". Having failed to produce any supporting documents, the appellant cannot claim any relief due to financial difficulties. However the fact remains that the appellant was under the bonafide impression that the part time employees need not be enrolled to provident fund and therefore no contribution was deducted from the salary of those employees. Hence the appellant is entitled to some relief as far as damages is concerned in respect

to the payment of dues in respect of the part time employees for the period from 06/2014 to 09/2016.

5. Considering the facts, circumstances and pleadings in this appeal, 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 the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer