



सत्यमेव जयते

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

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

(Thursday the 20th day of February, 2020)

APPEAL No.78/2018

Appellant : M/s.West Coast Tile Works
Cheruvannur
Kolathara P.O.
Kozhikode - 673655

By Adv.P. P. Balan

Respondent : The Assistant PFCommissioner
EPFO, Regional Office
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 09.01.2020 and this Tribunal-cum-Labour Court on 20.02.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KKD/226/000/ENF/2(1)/2017/6435 dt.16.01.2018 issued U/s 14B of EPF & MP Act, 1952 assessing damages for belated remittance of contribution for the period from 01/2001 to 04/2017. The total damages assessed is Rs.7,93,640/-.

2. The appellant was a factory engaged in the manufacturing of roofing tiles and other terracotta materials from 1942. The industry started crumbling from beginning of last decade and almost all the big units doing the above nature of business were closed in the state of Kerala. The appellant also closed its operations on 26.06.2017. The reason for closure was non availability of raw material and financial crisis due to accumulated stocks because of the import from China. The lay off process of the appellant establishment started an year back and all the workers were laid off on payment of statutory compensation. In spite of financial difficulties, the appellant remitted the provident fund contribution of its employees in entirety from 01.01.2001 to 30.04.2017. There was delay in remittance of contribution because of the financial difficulties explained above. The respondent issued notice U/s 14B of EPF & MP Act proposing to levy damages for belated remittance of contribution for the period from 01.01.2001 to 30.04.2017. A response to the notice was submitted to the respondent vide letter dt.12.10.2017 which is marked as Annexure 1 in this appeal. On the next date of posting the appellant also produced copies of challans for having remitted the amount for the period from 03/2012 to 08/2013 along with a letter dt.09.01.2018 which is marked as Annexure 2. The respondent was also informed of the permanent closure of the appellant establishment w.e.f 26.06.2017. The respondent issued the

impugned order without considering the Annexure 1 & 2 representations given by the appellant to the respondent during the course of enquiry.

3. The respondent filed counter denying the above allegations. The appellant was covered under the provisions of the Act. The appellant delayed remittance of contribution for the period from 01/2001 to 04/2017. Hence a notice was issued to the appellant along with a delay statement to show cause why damages U/s 14 of the Act shall not be levied against the appellant establishment. The appellant was also given an opportunity to appear in person and explain the delay. A representative of the appellant attended the hearing and admitted the delay in remittance of contribution. The appellant also submitted copies of challans for the period from 03/2012 to 08/2013 along with Annexure A2 letter. The appellant also furnished details regarding remittance made for the period from 07/2011 to 08/2013. All these information and record furnished by the appellant was verified and taken into account while finalizing the impugned order. In view of the submissions made by the appellant, the damages proposed to be levied was reduced from 7,96,622/- to 7,93,640/-. The respondent did not violate any of the principles of natural justice as the delay statement containing all relevant information was forwarded to the appellant well in advance and thereafter an opportunity was given for personal hearing and all the relevant information given by the representative of the appellant

establishment was considered before the impugned orders were issued. The claim of the appellant regarding financial difficulties, non availability of raw materials, accumulation of stock due to various reasons etc., cannot be accepted as a ground to escape the liability of remitting the provident fund contribution in time. In **Calicut Modern Spinning & Weaving Mills Ltd Vs RPFC**, 1982 KLT 303 the Hon'ble High Court of Kerala held that even in case of lockout, strike etc., failure to make the contribution resulting in default will have to be visited by damages U/s 14B of the Act. In **Chairman, SEBI Vs Sriram Mutual Fund and another**, (2006) 5 SCC 361 the Hon'ble Supreme Court held that " in our opinion the Tribunal has miserably failed to appreciate that by setting aside the order of the Adjudicating Officer the Tribunal was setting a serious wrong precedent whereby every offender would take shelter of alleged hardships to violate the provisions of the Act. In our opinion mensrea is not an essential ingredient for contravention of the provisions of a civil Act. In our view, penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violations becomes immaterial. In other words breach of civil obligation which attracts penalty under the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not ".

4. The main ground pleaded by the appellant for delay in remittance of contribution is that of financial difficulties. The respondent before issuing the impugned order gave an opportunity to the appellant to explain the delay in remittance of provident fund contribution. The appellant availed the said opportunity and produced available challans to point out that the date of remittance in respect of certain payments were not correctly reflected in the delay statement sent across to them. Those corrections were incorporated by the respondent before issuing the impugned order. Hence there is no case on the side of the appellant that the principles of natural justice were violated. The main contention of the learned Counsel for the appellant was that the appellant pleaded financial difficulties as the main ground for reducing or waiving the damages proposed to be assessed against the appellant, which was not considered by the respondent. According to the learned Counsel for the respondent, he is fettered by Para 32A of the Scheme and he cannot exercise the discretion beyond what is provided U/s 14B read with Para 32A of EPF Scheme. Though the appellant failed to produce any documents to support the claim of financial difficulties, it was argued that the appellant unit was closed w.e.f. 26.06.2017 after completing with all the legal requirements under the ID Act, 1947. This claim of the appellant was not disputed by the respondent. However the learned Counsel for the respondent argued that the wages in

respect of its employees were paid in time by the appellant and the employees share of contribution was also deducted from the salary of their employees. The appellant failed to remit even that part of contribution, which amounts to 50% of total contribution deducted from the salary of the employees in time with the respondent. Non payment of employees share of provident fund contribution deducted from the salary of employees is an offence U/s 405/406 IPC. Having committed an offence of breach of trust, the appellant cannot plea that there was no mensrea in delayed remittance of provident fund contribution.

5. In the facts and circumstances discussed above, I am inclined to hold that principles of justice will be met if the appellant is directed to remit 60% 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 60% of damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer