

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-2, MUMBAI

M/S. SANJAY MAINTENANCE SERVICES PVT. LTD.

PUNE - APPELLANT

V/s.

REGIONAL PROVIDENT FUND COMMISSIONER

PUNE. - RESPONDENT

ORDER

Dated : 17th MARCH 2020

Present: Mr. H.L. Chheda for the Appellant.

Mr. Suresh Kumar Advocate for the Respondent.

1. appeal is filed by the appellant under section 7 (i) of the EPF & MP Act, 1952 [hereinafter referred to as 'Act'] against the order dated 26.05.2016 passed by the Regional Provident Fund Commissioner, Pune who conducted the enquiry under section 14B of the Act and levied the penal damages for the period from 4/04 to 6/10 and 8/08 to 7/14.

2. The case of the appellant is that the appellant is into the business activities of providing various services including manpower supply. The RPFC having noticed that the appellant has made belated remittances for the period from 4/04 to 6/10 and 8/08 to 7/14 has issued notice dt. 22.9.14.

3. According to the appellant he pleaded before the respondent that the appellant was grimacing in plain gabbling to iron out financial difficulties that was neither the law breaker nor law maker and also pleaded that the monthly PF contribution dues were

remitted by the appellant when the business of the appellant was running smooth and it is only after the recession unfolded and the appellant's clients made belated payment to appellant, the appellant was compelled to disburse the salary and allowances to the employees employed. As such the appellant has made request to the respondent Commissioner to enquire into the facts of the case and consider submission made by the appellant.

4. According to the appellant, the respondent Commissioner ignoring the verbal submissions made by the appellant during the proceedings the mitigating circumstances stated by the appellant without offering any tenable grounds without enquiring whether submissions made by the appellant were true or otherwise has levied damages and passed the impugned order. As such the respondent Commissioner has not applied mind to the facts of the case and levied the damages at maximum without providing tenable grounds for primarily electing to invoke the provisions made u/s. 14B.

5. Learned Counsel for the respondent supported the order passed by the PF authority stating that during enquiry the representative of the employer was unable to attend the hearing on various dates. However, on 9.6.15 Mr. Hemant Patil, HR Manager appeared on behalf of the estt. but he accepted the revised amount of interest & damages. It is stated that excuses put forth by the appellant for non-payment of PF contributions are not appreciable as industrial recession problem is not related to delay in remittance of PF dues. It is thus submitted that mens-rea cannot be a ground to be taken because it is wholly unnecessary to ascertain whether violation was essential or not. As such the order passed by the respondent Commissioner does not suffer from any illegality. Learned Counsel for the respondent seeks to rely on the

decision in case of Chairman SEBI V/s. Shriram Mutual Fund & Ors – 2006 (5) – SCC – 361.

6. Authorised representative for the appellant while advancing his arguments has stated that it is settled under the law that the belated remittances of PF dues liability to pay the damages does not arise automatically but the same will have to be decided by PF authorities by applying mind to the facts and merits of the case and not by resorting to arithmetic calculations. It is submitted that existence of mens-rea or actus-reius to contravene statutory provisions must be held to be necessary ingredient for levy of damages and / or quantum thereof. In the context, reliance is placed on the decision in case of ESIC V/s. HMT Ltd. & Ors. – (2008) – 1 – LLJ – 814 – SC.

7. It is mainly submitted by the appellant that many of the companies after availing services have not paid dues to the appellant which resulted in delay of payment of dues to the appellant by its clients thus resulting belated disbursement of salary & wages to the employees who worked for the companies and further resulted in delay in remitting the statutory dues. As such the belated remittances to the fund were made by the appellant for the reasons beyond its control. Hence it deserves to be treated a difficulty since in the actions of the appellant neither mens-rea or actus-reius was present.

8. Heard both sides.

9. According to Learned Counsel for the respondent there was no intention on the part of estt. either to make default or to remit the monthly PF contributions which is beneficial to its employees. But due to rising circumstances the estt. which are getting served by them stated that monthly charges, paying belatedly resulting in delay in

disbursing the salary and wages further delayed remittances of monthly PF contributions. As such according to appellant these mitigating circumstances have not been taken into consideration while imposing the damages.

10. On going through the impugned order it appears that authorised representative of the estt. admitted the amount as shown in the revised demand notice and further he had nothing to say in the matter and therefore the impugned order came to be passed. It appears from the impugned order that there is no other reasoning on the aspect as to why the mitigating circumstances pleaded by the appellant have not been considered while passing the impugned order. In that respect the impugned order cannot be said to be a reasoned order.

11. Even then the Learned Counsel for the respondent submitted that the contention of financial difficulty cannot be a ground for non-complying with the provisions of PF Act. But then it can be seen that even the impugned order does not speak about any such financial difficulty pleaded by the appellant which according to the respondent was not acceptable to him. As seen earlier the order only speaks about the fact that authorised representative has admitted the amount as shown in the notice. Obviously it appears to me that the impugned order is not a detailed and speaking order.

12. In the facts of the present case therefore I find that the appellant has demonstrated through documentary evidence that was annexed to the appeal that the appellant estt. was under severe financial constraints. So in the context reliance is placed on the decision in case of Shanti Garments P. Ltd. V/s. RPFC – 2003 – (1) – LLJ – 467 to submit that where there has been default discretion to reduce the damages should be exercised by the authorities. It has been observed that extent of

damages should not be confined to statutory interest payable so that employees may not be put to any loss. The authorities were accordingly directed to re-quantify the amount of damages. I find therefore that PF authorities under the act has to consider whether PF contributions are paid belatedly due to any deliberate inaction on the part of employer concerned or if his actions are contumacious or dishonest. If the reasons stated by the employer are correct wherein financial constraints is also a matter of relevance to be looked into in considering whether damages can be levied at all. But then each case will have to dealt with under special facts of that particular case.

13. Learned Counsel for the respondent seeks to rely on the decision in case of RPFV V/s. EPF Appellate Tribunal, CWP No. 1497 / 2014 [Punjab & Haryana H.C.]. In that case show cause notice was issued to the estt. / respondent but no any reply was given to the show cause notice u/s. 14B of the act. In the circumstances it was considered that the company cannot contain that the doctrine of mens-rea is attracted. It has been observed that the company has not utilised the opportunity in submitting the explanation to the show cause notice issued u/s. 14B of the act and as such the company has not made out a case so as to waive the damages levied in particularly with respondent No.2 proviso to section 14B of EPF Act.

14. Here in the instant case it appears that the appellant has replied the show cause notice and mentioned therein the circumstances and the grounds under which there was delay in paying the PF contribution. It is also mentioned in the reply that there was no intention on the part of estt. which is beneficial legislation to its employees. On the contrary it appears that the respondent has not analysed the reasons for default committed by the appellant and has not recorded the reasons for not considering the mitigating financial circumstances advanced by the appellant.

15. In view of discussions made at supra, the impugned order passed by the respondent does not sustain in the eyes of law. In my considered opinion with a view to secure substantial justice between the parties the damages levied by the respondent are reduced to 25% of the amount so levied which will be the appropriate damages under the facts & circumstances of the case.

16. Hence I order accordingly and impose 25% of the assessed amount of damages as penal damages to be collected from the appellant for the period in question. If the appellant has deposited 10% of the assessed amount for staying the order dated 26.05.2016, that amount be subtracted from 25% of the assessed amount of damages.

17. The copy of order be sent to both the parties. File be consigned to the Record Room after due compliance.

Date: 17.03.2020

(M.V. Deshpande)
Presiding Officer
CGIT -2, Mumbai