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

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

(Friday the 30th day of April 2021)

APPEAL No.221/2019
(Old No. ATA 1140(7)2014)

Appellant	:	Kalpetta Municipality, Kalpetta Village Vythiri Taluk, Wayanad- 673121 By Adv. T.J. Sundar Ram
Respondent	:	The Assistant PF Commissioner EPFO, Sub-Regional Office Eranhipalam P.O Kozhikode-673 006. By Adv. Dr. Abraham Meachinkara

This case coming up for final hearing on 23.03.2021 and this Tribunal-cum-Labour Court on 30.04.2021 passed the following:

O R D E R

Present appeal is filed from order No. KR/KK/28213/ Enf-5(3)/14B/2014/4809 dt.20/08/2014 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 01/2011 to 01/2014. The total damages assessed is Rs. 1,28,767/-.

2. The appellant is a Municipality under government of Kerala. The respondent informed the appellant vide its notice dt. 02/11/2011 that the appellant shall comply with the provision of the Act, in view of the notification No. SO/30(E). Since the appellant is a municipality under the supervision and control of the government and the government have to issue directions in all matters regarding finance, the appellant sent letters to government seeking confirmation to start compliance under the provisions of the Act. In the meanwhile respondent issued an order dt.13/09/2012 assessing the dues and also attaching the bank account of the appellant establishment. After repeated letters and reminders the government issued clarification vide letter No. Go (RT) No. 529/2013/LSGD dt. 19/03/2013 instructing the appellant to comply with the provisions of the Act. The appellant took sometime thereafter to take out the details of the employees and filed the return and also to remit contribution. The delay in remittance was not wilful. The respondent ought to have considered that the appellant was duty bound to get clarification from the government regarding the remittance of provident fund contribution because of the financial implications. The government provided the clarification only on 19/03/2019. The respondent ought to have seen that only after getting orders from the government the employees' details can be collected and remittance can be made.

3. The respondent filed counter denying the above allegations. All the municipalities and corporations in the country were brought under the provisions of the Act vide SO/30 E of Government of India hence all the municipalities are required to comply under the provisions of the Act from 01/2011 onwards. The appellant was also informed of these statutory requirements. However the appellant failed to comply. Hence the appellant initiated action U/s 7A of the Act assessed the dues and recovered the same from the appellant establishment. Admittedly there was delay in remittance of contribution by the appellant. Hence a notice U/s 14B of the Act was issued to the appellant establishment to show cause why damages shall not be levied for belated remittance of contribution. A detailed delay statement was also forwarded along with the notice. The appellant was also given a personal hearing on 20/05/2014. A representative of the appellant attended the hearing and admitted the delay. Accordingly the impugned order was issued. In ***Calicut Modern Spinning & Weaving Mills Vs RPFC,*** 1982 KLT 303 the Hon'ble High Court of Kerala observed that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that wages have been paid or not. In ***Associated Industries Pvt Ltd Vs. RPFC,*** 1963 (2) LLJ 652 the Hon'ble High Court of Kerala held that the employers are under legal obligation to deposit their share of contribution to the fund

within the time prescribed, the moment the Act and Scheme become applicable to them as no intimation or notice of any kind in that respect was necessary to be issued by the authorities concerned.

4. The only ground pleaded by the learned Counsel for the appellant in this appeal for the delay in remittance of contribution is that of the delay in getting the approval for compliance from the government. When the municipalities and corporations were brought under the provisions of the Act there was some hesitancy in implementing the provisions. The argument of the counsel for the appellant that the government will have to take a policy decision in such matters in view of the financial implication also cannot be ignored. At any cost this is clear case where no mensrea or intentional delay can be attributed to the appellant for delayed remittance of contribution. However the delay in remittance of contribution was more than 2 years and the appellant is liable to compensate part of the loss of interest to the employees, as the interest U/s 7Q may not be adequate to compensate the same.

5. Considering all the facts circumstances, pleadings and evidence in this appeal I am inclined to hold that interest of justice will be met if the appellant is directed to remit 60% of the damages as per the impugned order.

Hence the appeal is partially allowed, the impugned order U/s 14B is modified, and the appellant is direct to remit 60 % of the damages.

Sd/-
(V. Vijaya Kumar)
Presiding Officer