सत्यमेव जयते

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

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

(Friday the 7^{th} day of May 2021)

APPEAL No.12/2019

(Old No. 402(7) 2011)

Appellants

1. Tata Consultancy Services Ltd.,
   Technopark Campus,
   Kariavattam Post,
   Thiruvananthapuram 695 004.

By Adv. Benny P Thomas &
Adv. D. Prem Kamath

Respondent

1. The Assistant PF Commissioner
   EPFO, Regional Office,
   Pattom,
   Thiruvananthapuram-695 004.

   By Adv. Nitha N.S

2. Cleaners Welfare Society
   TV Centre Road, Peroorkada
   Thiruvananthapuram–695 005

This case coming up for final hearing on 19.03.2021 and this Tribunal-cum-Labour Court on 07.05.2021 passed the following:

O R D E R

Present appeal is filed from Order No. KR/ 16176/RO/TVM/PD/NS/2010/8994 dt. 12.10.2010 assessing damages U/s 14B of EPF & MP Act 1952 (hereinafter referred to as 'the Act') for delayed remittance by one of its contractor namely M/s. Veenus Welfare society for belated payments of contribution for the period from 06/97 to 02/2003.The total damages assessed is Rs. 1,39,702/-.

2. The appellant is a company registered under Companies Act 1956. The appellant is engaged in the business of information technology consultancy services, business processing outsourcing and information technology services. The appellant company is covered under the provision of the Act vide notification dt. 27/07/2006. The appellant is having units all over the country. The appellant at Trivandrum is engaged in training activities of the personal selected for various positions in the company. The appellant engaged M/s. Cleaners Welfare Society for providing cleaning and housekeeping services vide agreement dt. 21/02/1997. The said agreement was renewed

from time to time till March 2003. As per the agreement the contractor is liable to pay provident fund in respect of its employees and they were paying contribution from time to time. After 4 years of termination of the agreement, in the year 2007, the appellant received a summons dt. 07/02/2007 from the respondent No.1 alleging that the appellant failed to remit provident fund contribution for the period 01/06/1997 to January 2007 in respect of M/s. Cleaners Welfare Society. The appellant attended the hearing on 28/02/2007. The appellant pleaded before the first respondent that the contributions were paid by M/s. Cleaners Welfare Society. Without further hearing the first respondent concluded the enquiry U/s 7A of the Act. M/s. Cleaners Welfare Society produced challans for having remitted contributions vide Annexure (A) letter dt. 14/06/2017. On the basis of the challans produced, the 1st respondent confirmed vide letter dt. 11/07/2007 that an amount of Rs.2,09,095/- had been remitted by the 2nd respondent and the balance amount is required to be paid. A copy of the letter is produced and marked as Annexure (B). The 2nd Respondent agreed that the balance also will paid by him before

05/12/2007. The appellant filed a review but the same was rejected by the 1st respondent vide order dt. 13/07/2007. The 2nd respondent remitted the balance amount outstanding as per the claim of the first respondent. The 1st respondent thereafter issued notice dt. 06/09/2010 to M/s. Cleaners Welfare Society regarding levy of damages and interest for the period 06/1997 to 03/2000. M/s Cleaners Welfare Society appeared before the respondent and stated that M/s TCS is the principal employer and they are responsible for the payment of damages. The 1st respondent issued notice dt. 23/09/2010. Alongwith the notice respondent forwarded a copy of the recovery notice dt.06/09/2010 issued to M/s. Cleaners Welfare Society. The copies of the notice and the recovery notice are produced and marked as Annexure D & E respectively. The first respondent also issued another recovery notice dt. 24/09/2010 on the appellate claiming damages and interest for the period 03/2000 to 03/2002, copy of which is produced and marked as Annexure F. The appellant vide its letter dt. 06/10/2010 informed the 1st respondent that EPF Act was not applicable to the appellant prior to 27/07/2006 and therefore the appellant is not liable to pay any damages. The replies are produced and marked as Annexure G&H respectively. The respondent thereafter issued an order dt. 12/10/2010 directing the appellant and M/s. Cleaners Welfare Society to pay damages and interest for the period 06/1997 to 02/2003. Copy of the order is annexed as Annexure I. The appellant filed an appeal No. ATA 740 (7) 2010 before the EPF Appellate Tribunal New Delhi and the Tribunal vide its order dt. 09/12/2010 stayed the operation of the order. A copy of the order is produced and marked as Annexure J. Due to the pendency of said appeal the 1st respondent issued notice 25/01/2011 to M/s. Cleaners Welfare Society to show cause why damages shall not be levied on the 2nd respondent. A copy of the said notice is produced and marked as Annexure K. A representative of the 2nd respondent appeared before the 1st respondent and thereafter a notice was issued to the appellant. A copy of the notice is produced and marked as Annexure L. The appellant entered appearance on 25/03/2011 and informed the 1st respondent that for the period January 2002 to February 2003, the damages have already been determined by its order dt. 12/10/2010 and the same issue cannot be reagitated as barred by res judicata. A copy of the notice dt. 25.03.2011 is produced and marked as Annexure M. On 25/03/2011 the respondent No.1 handed over notice dt.25/01/2011 to the appellant and proceeded to determine the damages and interest. The 1st respondent failed to consider the fact that the Act was not applicable to the appellant during period January 2000 to March 2003. The first respondent also failed to consider that the damages for the period January 2000 to March 2003 has already been determined by its earlier order dt. 12.10.2010. The appellant was not given proper opportunity before issuing the impugned order. The 1st respondent failed to decide the crucial issue whether the appellant or the contractor is liable to pay the damages. The 1st respondent failed to consider whether there is any mensrea in belated remittance of contribution. The 1st respondent failed to consider that M/s. Cleaners Welfare was an independent employer and provides services to various companies within Technopark and therefore they are not exclusive contractor for the appellant. The 1st respondent failed to consider the letter dt. 26/10/2007 issued by M/s Cleaners

Welfare Society to the 1st respondent admitting, that Cleaners Welfare Society is the principal employer.

3. Respondent filed counter denying the above allegations. M/s Cleaners Welfare Society is covered under the provision of the Act under Code No.KR/16176. An employer is liable to remit the contributions within 15 days of the close of every month. In case of delay in remittance, the employer is liable to pay damages. Since there was delay in remittance of contributions for the period 06/1997 to 03/2000. The 1st respondent issued notice to M/s Cleaners Welfare Society. A representative of Cleaners Welfare Society attended the hearing and stated that during the period of notice, the society was an exclusive contractor of the appellant. The principal employer was liable for damages as delay in remittance was due to delay in payment of service charges by the appellant. Hence notice was issued to the appellant and after hearing both the parties an order was issued assessing damages and interest. The appellant approached the Hon'ble EPF Appellate Tribunal New Delhi and the order of the 1st respondent was stayed by the Tribunal.

During the pendency of that appeal the 1st respondent issued another notice to M/s Cleaners Welfare Society for delayed remittance of contribution for the period from 01/2002 to 3/2003. In the enquiry the representative of M/s Cleaners Welfare Society contended that the appellant is the principal employer and is therefore liable for paying damages for belated remittance of contribution. Notice was issued to the appellant and appellant entered appearance and pleaded that damages upto 02/2003 has already been determined and the order determining the damages has already been stayed by the EPF Appellate Tribunal. The respondent found that the present proceedings is for a different spell of payments and therefore the stay granted by EPF Appellate Tribunal in the earlier assessment order will not prohibit the 1st respondent from assessing damages during the second spell. For the claim of the appellant that damages are payable only if there is intentional delay is not supported by any authority. The Hon'ble Supreme Court of India in ***Organo Chemical Industries Vs Union of India***, 1974 (4) SCC 573 held that damages under 14B is punitive and reformative to avoid further delay in remittance of contribution. The Hon'ble High Court of Kerala in ***RPFC Vs Bharath Plywood and Timber Products Pvt. Ltd***, 1979 KLT 653 held that the power given to the authority to U/s 14B of the Act is to impose damages. It is only in the nature of penalty or punishment and the only safeguard provided for in the Act is that before recovering damages an opportunity must be given to the employer for being heard in the matter.

4. Though the appellant challenged the impugned order on various grounds, the crucial question to be decided in this appeal is with regard to the liability of the appellant to pay damages U/s 14B in respect of belated remittances made by one of its independent contractors. The appellant also emphasized the fact that the appellant is covered under the provisions of the Act only after the notification dt. 27/07/2006 and the appellant cannot be held liable for any damages prior to its coverage under the provisions of the Act. There is no dispute regarding the fact that the appellant is liable and responsible for remitting the contribution in respect of the contract employees engaged by the appellant, in view of the definition of employees U/s 2(f)

of the Act and Sec 8A and also Paras 30 & 38 of EPF Scheme. However the issue in this appeal is whether the appellant as principal employer is liable to remit damages for the delayed remittance of contribution by one independent contractor. Though the contractor raised a plea that they were exclusive contractor to the appellant at the relevant point of time the same was seriously contended by the appellant stating that the contractor was engaged by many establishments in Technopark area. Though the appellant, as principal employer, is liable for remittance of contribution in respect of all the employees engaged including the contract employees engaged by them in view of the provisions discussed above, the same cannot be held applicable when its come to the questions of damages U/s 14B of the Act. According to the contractor, the delay in remittance of contribution was due to the fact that there was delay in payment of contract amount. However it is not possible legally to hold the principal employer is liable for damages for belated remittance of contribution. The Division Bench of the Hon'ble High Court of Kerala in ***Malabar Cement Vs Malabar Cement Labour Contract Society c***onsidered the issue. In this case the

EPF imposed damages on the labour contractor for belated contribution. The appeal filed before the EPF Appellate Tribunal was dismissed. In the Writ Petition single judge of the Hon'ble High Court held that the principal employer is also liable in view of Para 30 (3) of EPF Scheme. In the challenge before the Division Bench, the order of the single judge was set aside and it was held that the liability cannot be legally attached on principal employer but only on the labour contractor. In view of the above finding by the Division Bench of Hon'ble High Court of Kerala it is clear that the appellant as principal employer cannot be held liable for damages for belated remittance of contribution in respect of an independent contractor who is separately covered under the provision of the Act.

5. In view of the above finding I am not inclined to enter any finding with regard to other issues raised by the appellant in this appeal.

6. Considering the facts, circumstances, pleadings and evidence in this appeal, it is held that the appellant cannot be held liable for the damages as per the impugned order.

Hence the appeal is allowed the impugned order is modified holding that the appellant is not liable to pay the damages as per the impugned order. Since the assessment against the 2nd respondent is not under challenge there is no modification in the impugned order as far as the 2nd respondent is concerned.

Sd/-
(V. Vijaya Kumar)
Presiding Officer