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

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

(Wednesday the 21st day of October, 2020)

APPEAL No.302/2018

Appellant	:	M/s.Chazhikattu Hospitals Pvt Ltd IX/139A, River View Road Chazhikattu, Thodupuzha Idukki – 685584
		By Adv.Benny P. Thomas
Respondent	:	The Assistant PF Commissioner EPFO, Regional Office Kottayam – 686001
		By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 18.03.2020 and this Tribunal-cum-Labour Court on 21.10.2020 passed the following:

O R D E R

Present appeal is filed from order no.KR/KTM/20449/APFFC/Penal Damage/14B/2018-19 dt.26.07.2018 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of contribution

for the period from 02/2012 to 12/2016. The total damages assessed is Rs.5,79,094/-.

2. The appellant is a private multispecialty hospital registered under the Companies Act. The appellant is regular in compliance. The respondent came with Employees Enrollment Campaign, 2017 (EEC) to ensure enrollment of all non enrolled employees to PF. The appellant on 17.03.2017 filed a declaration in respect of non enrolled employees to claim the benefits offered under the notification. Out of the 59 challans, 27 challans were paid within 15 days and 32 challans could not be uploaded due to system failure/software problems. However the entire contributions were paid before 06.04.2017, well within the extended period of the scheme. After payment of contribution and interest the appellant received a notice from the respondent alleging delay in remittance of contribution. A representative of the appellant appeared before the respondent and submitted the records of ECR payments and submitted details of enrollment in the prescribed format. The appellant also admitted that he is willing and ready to pay the damages as per the provisions of the scheme. The appellant believed in all bonafides that the appellant can remit the contribution and damages to avail the benefit of the scheme within the scheme period. Without considering any of the submissions

the respondent issued the impugned order. The respondent did not consider the fact that all the remittances were made within the scheme period. The respondent also did not consider the fact that the system failure during the relevant point of time prohibiting the appellant from remitting the contribution in time. In **RPFC Vs S.D. College, Hoshiarpur**, 1997 (2) LLJ 55 the Hon'ble Supreme Court held that though the Commissioner has no power to waive the penalty altogether, he has the discretion to reduce the percentage of damages. In **Indian Telephone Industries Ltd Vs APFC**, W.P.(C) no.32515/2005 the Hon'ble High Court of Kerala held that the authority exercising powers U/s 14B has the discretion to reduce damages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The Employees Provident Fund Organization came with an amnesty scheme called Employees Enrollment Campaign, 2017 (EEC) by incorporating Para 82A in the EPF Scheme, 1952 to provide an opportunity to employers to voluntarily come forward and declare non enrolled employees who were entitled for provident fund membership between 01.04.2009 to 31.12.2016. The scheme was in force from 01.01.2017 to 31.03.2017 and further extended till 30.06.2017. As per the scheme, the employer is required to furnish a declaration in respect of

the employees who were required or entitled to become member of the fund and the date of eligibility in respect of each employee for membership. As per Para 82A (III) the employer shall within 15 days from the date of furnishing the declaration remit the employer's contribution payable in accordance with the provisions of the scheme and employees' share, if any, deducted from the salary of the employees along with interest payable in accordance with Sec 7Q of the Act and the damages as notified in the Scheme. The employer need not pay employees' contribution if the same has not been deducted from the wages of the employees. As per Para 82A sub para 6, if the employer fails to remit the contribution, interest and damages payable by him within 15 days of the declaration, then the declaration sent by the employer under sub para 2 shall be deemed to have not be made by such employer under the scheme. The incentives provided to the employer who opted to enroll their employees were, waiver of the employees' share of contribution, waiver of administrative charges and reduction of damages to Rs.1/- per annum. The appellant filed his declaration dt.08.03.2017. The respondent denied that the appellant remitted 27 challans within 15 days and 32 challans could not be uploaded due to system failure and the entire contribution was paid before 06.04.2017. Since the appellant failed to pay contributions within 15 days from the date of declaration on 08.03.2017, he is not entitled for the benefits under the EEC

2017.   The appellant ought to have remitted the contribution on or before 23.03.2017 to claim the benefits under the scheme.

4.   The whole dispute is confined to the payments made under the EEC 2017 notified by the Govt of India. As per the above scheme, the appellant was required to declare the non enrolled employees in the prescribed format and remit the employer's share of contribution, interest U/s 7Q of the Act and the damages of Rs.1/- per annum within 15 days of filing the declaration.   It is clear from the pleadings of the respondent that the appellant failed to comply with the requirements of the remittance of contribution,   interest and damages within 15 days from the date of declaration. Hence the appellant is not entitled for the benefits of the scheme as Para 82A (6) will clearly states that if the remittances are not made within 15 days the declaration made by the employer will be treated as invalid.

5.   The learned Counsel for the appellant   argued that even if   the remittances are delayed a little bit the respondent cannot allege any intentional delay in remittance of contribution.   The learned Counsel for the respondent argued that   there was already a violation of the Act and Scheme provisions when the eligible employees were not enrolled to the Fund. Hence

their claim that the delay in remittance of contribution was not intentional cannot be accepted. When the scheme was notified there was lot of confusion regarding the terms of remittance by the employers. From the appeals filed before this Tribunal it can be seen that many of the employers were under the impression that the contribution is only required to be paid within 15 days of declaration. Many employers failed to remit the interest U/s 7Q and damages within 15 days as stipulated in the scheme. In this case the appellant was under the impression that the contribution, interest and damages need to be paid within the Scheme period. Being a statutory provision, the appellant cannot bypass the same if the remittances are not made in time as stipulated under the scheme. Hence the appellant is not entitled for the benefits under the scheme. However the claim of the learned Counsel for the respondent that the delay was intentional cannot be accepted for the reason that the employers only try to avail the benefits under the amnesty scheme and they cannot claim the benefit by violating the provisions of the scheme. Hence I am inclined to hold that the delay in remittance of contribution, interest and damages as per the scheme provisions was not intentional and therefore the appellant is entitled for some relief with regard to damages.

6.   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