

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 25116 of 2005 (M)

PETITIONER(S) :

**M/S.TORRY HARRIS SEAFOODS LTD.,
ERAMALLOOR P.O., ALAPPUZHA,
REP. BY ITS MANAGING DIRECTOR, S.LALJI, S/O.SADASIVAN,
AGED 56 YEARS, M/S.TORRY HARRIS SEAFOODS LTD.,
ERAMALLOOR, P.O.ALAPPUZHA.**

BY ADV. SRI.M.R.NANDAKUMAR

RESPONDENT(S) :

- 1. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN,
KALLOOR, KOCHI- 682 017.**
- 2. THE PROVIDENT FUNDS APPELLANT TRIBUNAL,
NEW DELHI.**

BY ADV. SRI.S.GOPAKUMARAN NAIR, SC, P.F.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-11-2015, THE COURT ON 11-11-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER OF THE SBT, TVM DATED 27.07.1998.

EXHIBIT P2: TRUE COPY OF THE FAX MESSAGE FROM MPEDA TO M/S.TORRY HARRIS SEAFOOD LTD., DATED 28.05.1999.

EXHIBIT P3: TRUE COPY OF THE LETTER ISSUED BY THE TORRY HARRIS SEAFOODS LTD., TO EPFO, DATED 05.01.2004.

EXHIBIT P4: TRUE COPY OF THE ORDER NO.KR/KC/15511/PD/B/T(1)/2004 DATED 06.05.2004 OF THE ASST.PROVIDENT FUND COMMISSIONER, KOCHI.

EXHIBIT P5: TRUE COPY OF THE ORDER NO.KR/KC/15511/DAMAGES CELL/7Q/T(1) 2004/931 DATED 06.05.2004.

EXHIBIT P6: TRUE COPY OF THE ORDER IN APPEAL NO.ATA 414(7) 2004 DATED 26.02.2005 PROVIDENT FUND APPELLATE TRIBUNAL, NEW DELHI.

EXHIBIT P7: TRUE COPY OF THE ORDER NO.KR/KC/15511/RECOVERY/2005 DATED 25.07.2005 OF THE EPFO.

EXHIBIT P8: TRUE COPY OF THE DETAILS OF REMITTANCE FOR THE PERIOD OCTOBER/02 TO JULY/05.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.25116 of 2005

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Dated this the 11th day of November, 2015

JUDGMENT

The petitioner is a company registered under the Companies Act. The petitioner alleges that the company is a pioneer in the seafood industry and is covered by the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 under Code No.KR/15511. The petitioner further alleges that they had been regularly and promptly complying with the provisions of the Act and the Scheme thereunder.

2. During 1999, there had been severe quality problems with the overseas customers and the petitioner plunged into financial crises. Later, the stocks held by M/s.Torry Harris Seafoods, Spain was liquidated and all the bills were met by 2002. During these years, the petitioner made arrangements with the State Bank of India, Alleppey for bill discounting. By enjoying this facility, they

continued with the business and were able to pay the arrears of employees' provident fund contribution though in a delayed period. However, it took another two years for the petitioner's company to realise from the financial crises.

3. The petitioner further alleges that during the year 1999-2000 the petitioner was under severe shortage of funds and loss in exports to such an extent that the petitioner was not even in a position to disburse the salary or pay bills in a time and a contribution towards employees' provident fund also were not made. The petitioner further alleges that when the financial position of the petitioner improved during the period 10/2000 to 4/2001 before setting off any other debts, the petitioner cleared all its provident fund dues in October, 2000 and April 2001 itself. However, the first respondent by Exts.P4 and P5 orders directed the petitioner to remit an amount of ₹6,52,302/- towards damages and interest. Aggrieved by the same, the petitioner filed an appeal before the Employees Provident fund

Appellate Tribunal which passed Ext.P6 order reducing 30% of the damages imposed by the first respondent. Thereafter the first respondent issued Ext.P7 directing the petitioner to remit any amount of ₹5,99,129/- towards damages and interest. It is with this background, the petitioner has approached this Court.

4. In the statement filed by the first respondent, it was contended as follows:

The first respondent after considering the facts and circumstances of the case and perusal of the documents, reached the conclusion that there is no valid ground for committing default in the payment of provident fund dues, especially when considering that even the contribution deducted from the salary of the workers were not remitted promptly to the concerned EPF accounts. Therefore, the first respondent by virtue of powers vested under the Act, levied penal damages amounting to ₹4,88,018/- at the rates prescribed under Para 32A of the EPF Scheme vide Ext.P4 and simple interest @ 12% amounting to ₹1,64,2184/- vide Ext.P5 under Section 14B/7Q respectively.

It was further stated that the petitioner has filed Appeal No.ATA 414(7) 2004 challenging Exts.P4 and P5 orders before the second respondent which was considered during the camp sitting at Kochi treating the appeal as filed against Ext.P4 only. The appeal was disposed of by Ext.P6 order by reducing the quantum of penal damages by 30% thereby fixing the liability under Section 14B as ₹41,613/- in view of the peculiar circumstances of the case. The appeal filed against Ext.P5 order was eventually withdrawn during the hearing.

It was further stated that in addition to the above period, it has come to the notice of the respondent that the petitioner had defaulted in remittance of statutory dues in respect of the following periods also for which action was duly initiated to impose penal damages under Section 4B and interest under Section 7Q by issuing appropriate proceedings/ notices indicated as such. The period of assessment include the pre-discovery period also for which the penal damages were levied at the rate of 12@ only.

Sl. No	Period	Penal Damages	Interest	Date of Notice
1	10/98 to 3/99	₹32,629/-	₹12,816/-	14.1.2005

Sl. No	Period	Penal Damages	Interest	Date of Notice
2	4/01 to 3/02	₹31,580/-	₹15,866/-	28.1.2005
3	6/97 to 12/97 & 7/98	₹13,250/-	₹10,252/-	16.2.2005
4	6/02 to 9/02	₹7,987/-	₹5,278/-	16.2.2005

According to the first respondent, the above table evidences the chronic nature of default committed by the petitioner and it is the case of this respondent that the case does not merit any further leniency than the 30% reduction in penal damages granted by the second respondent vide Ext.P6 order. It was also contended that Ext.P6 order issued by the second respondent is well reasoned.

5. Arguments have been heard.

6. It was pointed out by the learned counsel for the petitioner that the respondents lost sight of the fact that remittance could not be made in time due to the reasons beyond the control of the petitioner. It was also pointed out that the Tribunal ought to have considered the financial position of the petitioner during the year 1999-2000.

7. The petitioner is a pioneer in seafood industry and has covered the Employees Provident Fund and Miscellaneous

Provisions Act, 1952. during 1999, the financial position was in such a way that there was no sufficient means to meet the day to day requirements of the petitioner. At that time, payment of contribution was not at all possible. As rightly pointed out, the second respondent who passed the impugned order has understood and impliedly admitted these facts. By the impugned order, the deduction of 30% of the demand was allowed by the Tribunal.

8. The provident fund dues are of statutory nature which has to be paid within the stipulated time, irrespective of the financial condition or the profit earning capacity of the establishment. It is the duty of the first respondent to credit the contributions to the individual accounts of the petitioner's employees from the due date itself, allow interest, and provide other benefits regardless the date of actual remittance by the petitioner. Therefore, undoubtedly the same would cause immense pecuniary loss to the organisation and that is the reason why penal interest has been levied.

9. However, considering the financial position of the petitioner, this Court is of the view that the learned Tribunal ought to have given a further reduction of the total demand. Therefore, the writ petition is disposed of modifying the impugned order and permitting the petitioner to pay 60% of the demand instead of 70% ordered by the Tribunal in six equal monthly installments starting from 1.12.2015.

As the petitioner has deposited 50% of the demand as per the interim order of this Court, they are bound to deposit the balance 10% as above. If the petitioner fails in depositing two installments consecutively, it shall be open to the respondents to realise the amount as ordered by the Tribunal in the impugned order.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj

//true copy//

P.A to Judge