



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Friday the, 3rdDecember 2021)

APPEAL No. 230/2019
(Old No. ATA423(7) 2015)

Appellant

M/s. Project Engineering
Corporation Ltd.
Marine Drive,
Kochi – 682 031.

By Adv. R.Rajesh

Respondent

The AssistantPF Commissioner
EPFO, Sub Regional Office,
Kaloor,
Kochi – 682 017

By Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 06.08.2021 and this
Tribunal-cum-Labour Court on 03.12.2021 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/21782/
Enf.1(4)2015/13033 dated 11.02.2015 assessing dues under Sec
7A of the EPF and MP Act (hereinafter referred to as ‘the Act’)for
non enrolled employees for the period from 09/2011 to 06/2014.

The total dues assessed is Rs. 2,13,038/- (Rupees two lakh thirteen thousand thirty eight only)

2. The appellant received a letter dated 26.08.2014 from the office of the respondent through the Enforcement officer proposing to conduct inspection of the appellant establishment. No inspection was conducted. The appellant was directed to produce the relevant documents vide letter dated 26.08.2014 and 28.08.2014. A copy of the letter dated 26.08.2014 is produced and marked as Annexure A2. The Enforcement officer submitted his report dated 27.10.2014 without properly conducting an inspection in the establishment. Copy of the Inspection report is produced and marked as Annexure A3. The appellant filed objection regarding the report stating that the report of the Enforcement officer is based on the statutory limit of Rs.6500/- whereas the salary of many of the employees were below Rs.6500/-. A copy of the objection letter dated 14.11.2014 is produced and marked as Annexure A4 (colly). The appellant received a notice dated 11.12.2014 from the respondent issued under Sec 7A of the Act directing the appellant to appear before the respondent authority on 15.01.2015. A copy of the notice

dated 11.12.2014 is produced and marked as Annexure A5. The appellant attended the hearing and produced the records called for. The appellant filed a written statement dated 16.01.2015 which is produced and marked as Annexure A6. The Enforcement officers used to inspect the appellant establishment earlier also and they never raised any objection regarding the Provident Fund deduction made from the salary of the employees. The report of the Enforcement Officer dated 27.10.2014 is therefore totally unjustifiable. The impugned order issued by the respondent authority is not sustainable in view of the fact that none of the documents produced by the appellant were considered in the impugned order. The respondent authority completely ignored the documents produced by the appellant but relied only on the report of the Enforcement Officer while finalising the enquiry. The respondent authority assessed dues on the total salary and not on the basic wages liable for Provident Fund deduction. The respondent also failed to consider the fact that some of the employees are excluded since their salary is beyond the statutory limit. The respondent failed to examine the Enforcement officer who conducted the inspection in the enquiry. The quantification

of dues in the impugned order does not disclose the basis of calculation. The respondent authority is completely silent on the contentions made by the appellant during the course of the enquiry under Sec 7A of the Act.

3. Respondent filed counter denying the above allegations. An Enforcement Officer conducted inspection of the appellants' office and reported that the appellant establishment is not complying with the provisions of the Act w.e.f 09/2011 and it was also reported that the appellant establishment remained closed. On verification of the wages register, leave register etc it was reported that the appellant establishment was paying salary to its employees. From the documents made available to the Enforcement Officer, it is seen that 13 employees were not enrolled to the fund taking them as excluded employees. The Enforcement Officer found that these employees were being paid much less than the statutory limit. The Enforcement Officer therefore reported the dues position for the period 09/2011 to 06/2014 through the inspection report dated 28.10.2014 along with the list of 13 employees to the appellant establishment and was also directed to remit the outstanding contribution. The

appellant failed to comply and therefore an enquiry under Sec 7A of the Act was initiated fixing the enquiry as on 15.01.2015. In the meanwhile, a letter dated 14.11.2014 was received from the appellant stating that from 08/2011, the appellant had not remitted any dues as the salaries of the employees crossed Rs.6500/-. On 15.01.2015, the representative of the appellant attended the hearing and submitted the appointment orders of Mr. Vinay and Mr. Sunil. It was also clarified that there was only one employee and his gross pay exceeded the salary limit of Rs.6500/- and therefore no contribution is remitted by the appellant. The respondent authority found that none of the employees were drawing salary beyond the statutory limit and therefore assessed the dues subject to the wage ceiling of Rs.6500/-. The claim of the appellant that they are not liable to remit contribution in respect of employees drawing more than Rs.6500/- as an 'excluded employee' is not correct. As per Para 2(f)(ii) and 26(3) of EPFScheme, "an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds Rs.6500/- per month" is considered as an excluded employee. Moreover an employee who was drawing a pay of more

than Rs. 6500/- at the time of joining the establishment will cease to be an excluded employee in case his pay was subsequently reduced to Rs.6500/- per month or less and thereafter he will be entitled to become a member of the Provident Fund Scheme. An employee can be treated as an excluded employee only if he was drawing a salary of Rs.6500/- per month on account of basic pay, dearness allowance, retaining allowance and cash value of concession on the date of joining an establishment. In the case of appellant establishment, majority of the employees are drawing salary much below Rs.6500/-. The records now produced in this appeal were not produced before the respondent authority. An employee who was said to have wages above Rs.6500/- but the Provident Fund deduction is only on basic which is Rs.2800/-. A copy of the salary revision order dated 01.09.2010 and Form-3A for 2011-2012 in respect of Sri. Antony.K.M is produced and marked as Exhibit R1 and R2. The salary is split into Basic, HRA, Conveyance, Medical, Telephone, Education EPF, and LTA with no element of DA. From the above documents, it can be seen that the Provident Fund contribution is

paid to the employee, instead of deduction. Moreover it is seen that conveyance and LTA are paid simultaneously.

4. The appellant establishment was in default from 09/2011. An Enforcement officer of the respondent organisation visited the appellant establishment and found that the appellant establishment was closed. However from the wage register, leave register etc produced before the Enforcement Officer, it was seen that salary in respect of 13 employees were being paid by the appellant even though the appellant establishment remained closed. The Enforcement Officer directed the appellant establishment to comply with the provision by remitting contribution in respect of the employee for whom salary is being paid. The appellant failed to remit the contribution. The respondent therefore initiated an enquiry under Sec 7A of the Act. The representatives of the appellant attended the hearing and filed a written statement clarifying that from 09/2011 onwards there was only one employee working in the establishment and his gross pay exceeded Rs.6500/- per month and therefore no contribution was paid since he is an excluded employee. The respondent authority issued the order on the basis of the report

of the Enforcement officer and the records produced by the appellant.

5. In this appeal, the appellant has taken a stand that the calculation of contribution in respect of coverable employees are not assessed correctly and also that the respondent authority assessed dues in respect of few employees who are excluded employee from the date of their appointment. The appellant produced various documents such as appointment orders of some employees, the wage revision orders etc to substantiate their claim. According to the learned Counsel for the appellant, the impugned order is bad in view of the fact that the respondent authority has not considered any of the submissions made by the appellant before the respondent authority. It is seen that the enquiry was completed on 15.01.2015 and Annexure A6 statement is dated 16.01.2015 and received in the office of the respondent on 19.01.2015. Hence it is clear that the Annexure A6 submission by the appellant is send after conclusion of the enquiry on 15.01.2015. Probably for that reason the submissions made by the appellant in Annexure A6 written submission does not find a place in the impugned order. However the respondent

authority is referring to a submission dated 14.11.2014 made by the appellant establishment addressed to the Enforcement officer with a copy to the Regional Provident Fund Commissioner. The copy of the letter dated 14.11.2014 is produced as Annexure A4(colly). In Annexure A4 letter, the appellant pointed out the employee wise details to argue that the proposed assessment on the basis of the report of the Enforcement officer is not correct. Though the respondent authority confirmed the receipt of this letter in the impugned order, failed to consider the contents of the letter or the reasons for ignoring the same. The learned Counsel for the respondent pointed out that many of the records produced in this appeal were not produced before the respondent authority at the time of 7A. According to him the documents now produced cannot be considered as the authenticity of those documents were not confirmed by the respondent authority. The learned Counsel for the respondent also pointed out that there are contradictions in the documents produced by the appellant in this appeal. For example he pointed out that in the case of the salary revision of Sri. Antony.K.M dated 01.09.2010, the EPF contribution of 670 is seen paid to the employee rather than deducting from the salary

of the employee. It is seen that this anomaly is corrected in subsequent pay revision on 01.09.2011 and 10.08.2013. In the case of Sri.Sudheer, in the offer of appointment dated 10.08.2013, the salary per month is given as Rs.7850/- whereas in the bifurcated salary details the total salary is shown as Rs.11750/-. The offer of appointment for Sri. Sudheer is dated 10.08.2013 whereas he is given a salary revision on 01.09.2011. Similarly, the offer of appointment of Sri.Sunil is dated 10.08.2013 whereas he is given a salary revision on 01.09.2011. Apart from these anomalies in the documents produced in this appeal there are also contradictions in the stands taken by the appellant. For example the appellant has taken a stand that Sri Antony.K.M. is an excluded employee. However the documents produced by the appellant shows that he is a member of provident fund and contribution is paid, through on a split up wages. It is not possible to examine the genuineness of the documents produced at the appellate stage, since the learned Counsel for the respondent stated that many of these documents now produced in the appeal were not produced at the time of enquiry and the same cannot be accepted at the appellate stage.

The learned Counsel for the appellant also submitted that the wages taken by the respondent authority to assess the dues is not correct. According to the learned Counsel for the respondent, the wages are split into various allowances and Provident Fund contribution is confined only to the basic, which is very low. According to him the appellant is liable to remit contribution in respect of allowances also except for those allowances which are specifically excluded as per the provisions of the Act. However it is not clear from the impugned order as to which are the allowances taken for the purpose of assessment of Provident Fund dues. Hence there is a case for the counsel for the appellant that the basis of the assessment is not disclosed in the impugned order.

6. The respondent authority shall consider the eligibility of each employee to be enrolled to the fund and decide the quantum of Provident Fund on the basis of the provisions of the Act. The impugned order shall disclose the reason for allowing/disallowing the claim of the appellant that some of these employees are excluded employees. The assessment is for the period from 09/2011 and it is also reported that the appellant

establishment was on the verge of closure in the year 2015. Hence it will be harsh on either side, if the case is remanded to the respondent authority to re-calculate the dues. However it is not possible to arrive at a right decision at the appellate stage in view of the conflicting evidence available in this appeal and the non-speaking nature of the impugned order.

7. Considering the facts, pleadings and arguments in this appeal, I am not inclined to uphold the impugned order.

8. Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to reassess the dues within a period of six months with notice to appellant. If the appellant fails to appear or produce the records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant under Sec 70 of the Act as per the direction of this Tribunal shall be adjusted or refunded on the conclusion of the enquiry.

Sd/-
(V.Vijaya Kumar)
Presiding Officer