



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

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

(Thursday the, 31st day of March 2022)

APPEAL No. 301/2019

Appellant : M/s. Kalpaka Transport
Company (Pvt) Ltd.
YMCA Road,
Kozhikode – 673 001

By Adv. C.Anil Kumar

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Eranhipalam.P.O.
Kozhikode – 673 006

By Adv.(Dr.)Abraham P Meachinkara

This case coming up for final hearing on 17.11.2021 and this Tribunal-cum-Labour Court on 31.03.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KKD/4473/7A/ Enf.1(1)/2019-20/2206 dated 09.07.2019 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for the period from 01/2018 – 08/2018. The total dues

assessed is Rs. 59,73,665/- (Rupees fifty nine lakh seventy three thousand six hundred and sixty five only)

2. The appellant is a Private Limited Company engaged in the business of parcel and cargo movement. It is covered under the provisions of the Act. For the past three years the appellant was running on huge loss. The reason for the slowdown is adverse business condition and lack of requisite business. As a result, the appellant was not able to pay salary of its employees. The appellant absorbed 357 employees in M/s. Kerala Transport Company w.e.f. 01.01.2018. The employees so absorbed were already enrolled to provident fund by M/s. Kerala Transport Company and the said partnership company could not remit their contribution till the date of their joining the appellant. Consequently their new EPF A/c with the appellant could not be opened. Consequently remittance of provident fund contribution was delayed. The respondent initiated proceedings under Sec 7A of the Act. The appellant entered appearance and filed a written statement. A copy of the written statement is produced and marked as Annexure 1. Ignoring the contentions of the appellant, the respondent issued the impugned order, a copy of which is

produced and marked as Annexure 2. Even though the appellant sought time for payment in instalments, the respondent refused to grant the same jeopardising the very existence of the appellant establishment. Annexure 2 does not reveal the basis of the assessment.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The appellant failed to remit contribution in respect of its employees as mandated under Sec 6 of the Act along with Para 30 of EPF Scheme for the period from 01/2018 – 08/2018. Hence an enquiry was initiated under Sec 7A vide summons dated 12.04.2019. The enquiry was fixed on 15.09.2019. The enquiry was adjourned on the request of the appellant. On 20.06.2019, the appellant filed a written statement stating that the contributions could not be remitted because of the huge loss due to adverse business condition. Since any further delay will jeopardise the interest of the employees, the impugned order was issued directing the appellant to remit contributions within 15 days. Various reasons cited by the appellant such as absorption of 357 employees of another

partnership firm and the financial constraints cannot be accepted as an excuse to delay the remittance of contribution. In ***Calicut Modern Spinning and Weaving Mills Vs RPFC*** 1982, KLT 303, the Division Bench of Hon'ble High Court of Kerala held that the employer is bound to pay contribution under the Act every month voluntarily irrespective of the fact that the wages have been paid or not. The contribution piled up only because of the inaction on the part of the appellant in remitting the contribution on time.

4. The learned Counsel for the appellant pleaded that the delay in remittance of contribution was only due to the absorption of 357 employees of another partnership firm of the Directors and consequential issues such as remitting the employer's contributions in respect of those employees. Further it was also pleaded that the delay in remittance was due to the financial difficulty of the appellant establishment and delayed payment of wages.

5. The learned Counsel for the respondent opposed the plea of the appellant on the ground that financial difficulty or other technical issues pointed out by the appellant will not be sufficient reason for delayed remittance of contribution by the

appellant. The learned Counsel also objected to the pleading that the enquiry was conducted without providing adequate opportunity to the appellant. According to him, time was granted on request by the appellant and no other ground other than financial difficulty was pleaded at the time of enquiry.

6. It is seen that the assessment as per the impugned order is with regard to the regular dues of the appellant establishment for the period from 01/2018 – 08/2018. As per Annexure 1 request before the respondent authority at the time of the enquiry, the appellant requested for time upto December 2019 to clear all pending dues. It is seen that the appellant failed to honour that commitment before the respondent authority. According to the learned Counsel for the appellant, the only prayer during the time of the enquiry was to grant instalment facility to remit the contribution. The learned Counsel for the appellant submitted that the request for instalment facility was not considered by the respondent authority.

7. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed. However the appellant may remit the balance contributions in six equal monthly instalments starting from 01.08.2022. If the appellant fails to remit any instalment, the respondent is free to initiate recovery action against the appellant. The instalment facility granted to remit the balance contribution will not in any way save the liability of the appellant under sec 14B and 7Q of the Act.

Sd/-
(V.Vijaya Kumar)
Presiding Officer