



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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M., Presiding Officer.
(Monday the 15th day of November, 2021)

APPEAL No.395/2019
Old No. ATA 1272(7)/2015

Appellant

M/s Nelson Motors,
Poosari Bungalow
Kayamkulam,
Alappuzha – 690 502I

By : Adv. R Sankarankutty Nair

Respondent

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

By : Adv. Sajeev Kumar K Gopal

This case coming up for final hearing on 16.04.2021 and this Tribunal-cum-Labour Court on 15.11.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KC/2823/ENF II(5)/2015-16/8972 dated 01/09/2015 assessing dues in respect of evaded wages under Section 7A of EPF and MP

Act(hereinafter referred to as 'the Act') for the period from 04/2011 – 11/2013. Total dues assessed is Rs.1,54,345/-. (Rupees one lakh fifty four thousand three hundred and forty five only).

2. Appellant is an establishment covered under the provisions of the Act. The appellant owns one tourist permit bus and two route permit buses. Tourist bus is running for a few days and is not having regular staff. The appellant was paying contribution on actual wages in respect of employees coverable under the provisions of the Act. These employees also work for 15 or lesser days in a month. The appellant establishment needs only 8 workers for running the service. The practice in the industry is that the workers work for 15 days in a month and they will not get full wages. Actual wages earned by the employees were recorded in the wage register and contribution is being paid on the basis of the amounts shown in the wage register. An Enforcement Officer of the respondent visited the appellant establishment and submitted a report stating that the appellant is not paying contribution on the salary limit of Rs.6500/- per month. He also issued an

inspection report on 07.01.2014 along with the statements showing the dues. The appellant therefore sent a letter on 29.01.2014 disputing the claim of the Enforcement officer and requested him to conduct re-verification of the record to find the actual wages (if any). The respondent also issued a letter dated 01.05.2014 directing the appellant to remit the amount quantified by the Enforcement officer. The appellant again disputed the claim vide his reply dated 07.05.2014. The report dated 02.01.2014 of the Enforcement officer is produced and marked as Exbt. A1 and its annexure is produced as Exbt. A2. In Exbt. A2, the Enforcement Officer has taken an amount as assumed wages per month and deducted the amount of contribution remitted by the appellant. There is no details regarding the omitted wages. The letter dated 29.01.2014 sent by the appellant to the Enforcement officer is produced and marked as Exbt. A3. The respondent authority issued a notice dated 01.05.2014. A copy of the notice is produced and marked as Exbt. A4. Appellant sent a reply on 07.05.2014 challenging the claim of the respondent and also repeating the request for re-verification. Copy of the said reply is produced

and marked as Exbt. A5. Without considering the request of the appellant for re-verification, the respondent authority initiated an enquiry under Sec 7A of the Act. A copy of the summons is produced and marked as Exbt. A6. The appellant depute an authorised representative and produced all records called for. Since the appellant could not appear in person the respondent imposed a fine of Rs. 500/- for non-appearance. A copy of the order is produced and marked as Exbt A7. Appellant sent a letter dated 18.02.2015 requesting to review the order. Copy of the letter is produced and marked as Exbt. A8. The respondent authority insisted for personnel appearance and posted the enquiry on 18.08.2015. A copy of the notice is produced and marked as Exbt. A9. The appellant send a letter dated 10.08.2015 stating the inability of the appellant to attend the hearing in person. However the representative was present on that day. A copy of the letter is produced and marked as Exbt. A10. Ignoring the contentions of the appellant the respondent issued the impugned order which is produced and marked as Exbt. A11. The respondent authority failed to notice that the employees are working in

rotation for 15 days only and the wages were paid through wage register which is signed by the employees.

3. Respondent filed counter denying the above allegations. An Enforcement officer inspected the appellant establishment on 02.01.2014 and reported dues on omitted wages for the period from 04/2011 – 11/2013. An enquiry under Sec 7A was initiated on the basis of the report. A representative of the appellant attended the enquiry and produced Wages/ Attendance register, Balance Sheet and Profit & Loss A/c for 2011-2012 and 2012-2013 and cash book and ledger. From the documents produced, the respondent authority found that the wages paid is not tallying with the records produced and that although almost all the days there is collection of money and expenses, the attendance is marked only for a few days. There is disparity for the month of 04/2011 on comparison with attendance and wage register. The same discrepancy was seen in all months for which the enquiry is initiated. Profit & Loss expenses and wages registers are not tallying. The appellant failed to produce any proof of vehicle running expenses which was shown as Rs. 37,36,934/-

and Rs. 42,11,962/- for the years 2011-2012 and 2012-2013 respectively. For the month of 4/2011 on all days from 01/04/2011 – 30/04/2011 only 1 to 5 employees are shown to have worked in the establishment, inspite of the fact that the appellant has two passenger carrier route buses and a tourist bus. The respondent authority found that the attendance register produced by the appellant is a fabricated document, as it was not convincing to believe that these three buses are operated with only 1 to 5 staff. The appellant failed to offer any explanation for this anomaly. It is also seen that the average wages/day/attendance is only Rs. 200/-. Based on the above finding, the respondent authority found that the appellant establishment is suppressing wages and therefore assessed the dues. It is very clear from the impugned order that the appellant was given adequate opportunity but failed to answer the deficiencies pointed out in the records produced by the appellant. The representative of the appellant produced wage register/attendance register, Balance sheet, Profit & Loss A/c for the year 2011-12 and 2012-13, cash book and ledger during the course of enquiry. It is seen that the wages recorded in the

wage register is not tallying with the other records produced by the appellant. It was also noted by the respondent authority that there is collection of money and expenses every day. However, the attendance register shows that the employees attended only a few days. The enquiry authority also recorded the disparity notice for the month of 04/2011 on comparison with attendance and wage register. The same disparity was seen for the period 04/2011 – 11/2013. The respondent authority also pointed out that the profit & loss expenses and wage registers are not tallying. The appellant also could not produce any details of vehicle running expenses for the year 2011-12 and 2012-13. For the whole month of April 2011, it is seen that there were only 1 to 5 employees operating two passenger carrier route permit buses and a tourist bus. The appellant failed to offer any reason to explain the engagement of 1 to 5 employees during the relevant period. Further the average wage per day as per attendance is Rs. 200/-. On the basis of the above evidence, the respondent authority came to the conclusion that there is evasion of wages and the same is quantified.

4. The Enforcement Officer of the respondent authority during his inspection found that the appellant establishment is having two route permit busses and one tourist bus. He also during his inspection found anomalies in the records maintained by the appellant establishment. Therefore he reported evasion of wages and also directed the appellant establishment to comply with the provisions and also directed to remit contribution on evaded wages. The appellant protested stating that contribution is being paid on the basis of the wage paid to the employees as shown in the wage register. Subsequently the respondent also issued a letter directing the appellant to comply with the direction of the Enforcement Officer. Since the appellant failed to comply, the respondent initiated an enquiry under Sec 7A of the Act. The appellant establishment was directed to produce various records before the respondent authority. On perusal of the records, the respondent authority found that the wages shown in the wage register does not tally with other records such as Profit & Loss account. It was also seen from the records that the appellant establishment was running buses everyday and collection and

expenses are recorded in the books of account of the appellant establishment. However the attendance register shows attendance only for a few days. The only explanation offered by the learned Counsel for the appellant is that as per the practice in the industry, the employees are given work for 15 days by rotation. However there is no explanation offered by the appellant as to how three buses are operated with 1 to 5 employees as seen in the records produced by the appellant and reproduced in the impugned order. It is also pointed out that the average salary per day for an employee is only Rs. 200/- which cannot be taken as the real salary for a driver or conductor working in a private bus. The appellant also failed to explain huge expenses shown towards vehicle running expenses. Taking into account all these anomalies, it is clear that there is suppression of real wages by the appellant establishment. The appellant establishment is the custodian of their records and it is upto him to produce those records and explain the clarifications sought by the respondent authority. In this case, the appellant failed to clarify the payments and confined his line that wages are paid through wages register

and provident fund contribution is paid on the wages shown in the wages register by the appellant.

5. It is seen that the respondent authority has provided adequate opportunity to the appellant to produce records and clarify the anomalies pointed out by him. Since the appellant failed to produce the required documents and also clarification, the appellant issued the order on a presumptive assessment on the basis of the report of the Enforcement Officer. It is not clear from the impugned order as to how the Enforcement Officer or for that matter the respondent authority arrived at the evaded wages on the basis of which the dues are quantified in the impugned order. Though it is too late in the day to remand the matter to the respondent authority, it is felt that the appellant can be given one more opportunity to clarify the issues raised by the authority and substantiate the same by producing the relevant documents.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to accept the assessment in the impugned order.

7. Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the dues on the basis of the above directions. If the appellant fails to appear or fails to produce the records called for or fails to clarify the issues raised by the respondent authority, the respondent authority is at liberty to decide the matter according to law on the basis of best assessment. The pre-deposit made as per the direction of this Tribunal under Sec 70 of the Act shall be adjusted or refunded on the conclusion of the above enquiry.

Sd/-
(V. Vijaya Kumar)
Presiding Officer