



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

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

(Wednesday the, 4<sup>th</sup> day of May 2022)

**APPEAL No. 626/2019**

(Old No. ATA.434(7)2013)

Appellant : M/s. Olam Agro India Limited,  
Bishop Jerome Nagar,  
Kollam – 691 001

By M/s. Menon & Pai

Respondent : 1. The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Ponnamma Chambers  
Kollam – 691 001

2. M/s. Ganesh Cashew Company  
Meeyannoor,  
Kottarakkara  
Kollam – 691 008

By Adv. Pirappancode V.S. Sudheer

This case coming up for final hearing on 09.03.2022 and this Tribunal-cum-Labour Court on 04.05.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KLM/2552/Enf 1 (3)/2013/7086 dated 11.07.2013 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for the period from 07/1999 to 03/2001. The total dues assessed is Rs.1,09,867/- (Rupees One lakh nine thousand eight hundred and sixty seven only)

2. The appellant is a Ltd. Company registered under Companies Act. The appellant is engaged among other things in the business of processing raw cashew nuts, importing cashew nuts and exporting cashew kernels. The appellant is covered under the provisions of the Act. During 07/1999 to 03/2001, the appellant entered into an agreement with the 2<sup>nd</sup> respondent for processing of raw cashewnuts. In terms of agreement, the 2<sup>nd</sup> respondent was engaging his own workers in the factory run by him. The 2<sup>nd</sup> respondent was liable to comply with all statutory obligations including payment of provident fund contribution. The 2<sup>nd</sup> respondent was the occupier of the factory and he was the employer in respect of the employees engaged in the factory. The said factory was also independently covered under the provisions of the Act. A true copy of the agreement is

produced and marked as Annexure A1. 1<sup>st</sup> respondent initiated an enquiry for the default of the 2<sup>nd</sup> respondent in remitting contribution. The 1<sup>st</sup> respondent assessed the dues and issued an order dated 8.05.2001, a copy of which is produced and marked as Annexure A2. The 2<sup>nd</sup> respondent challenged the order before EPF Appellate Tribunal in ATA No. 377(7)2003. The EPF Appellate Tribunal dismissed the appeal. A true copy of the order dated 8.02.2011 is produced and marked as Annexure A3. The 2<sup>nd</sup> respondent filed a Writ Petition No. 25675/2011 before the Hon'ble High Court of Kerala. The Hon'ble High Court set aside the order and directed the 1<sup>st</sup> respondent to issue notice to the appellant and decide the matter afresh. The judgement dated 03.04.2013 is produced and marked as Annexure A4. The 1<sup>st</sup> respondent conducted a fresh enquiry and concluded the proceedings, ignoring the contentions raised by the appellant and issued the impugned order, a copy of which is produced and marked as Annexure A5. The 1<sup>st</sup> respondent authority ought to have considered that Annexure A1 agreement was signed only for processing raw cashew nuts in the factory of the 2<sup>nd</sup> respondent and there was no principle employer – contractor

relationship between the appellant and the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent was the licensee of the factory under Factories Act and he was the occupier. 1<sup>st</sup> respondent also failed to recognise that the equipment, plant, machinery and the employees, all belong to the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent was covered under the provisions of the Act and they were remitting the contribution in respect of the employees engaged by them. The 1<sup>st</sup> respondent authority ought to have considered that even if the 2<sup>nd</sup> respondent were the contractor in terms of Para 32 of EPF Scheme, the 2<sup>nd</sup> respondent was liable to pay contribution in respect of employees engaged in the factory. The 1<sup>st</sup> respondent while relying on the TDS Certificate issued to the 2<sup>nd</sup> respondent to hold the 2<sup>nd</sup> respondent as contractor, the 1<sup>st</sup> respondent failed to consider that the term “contractor” under Sec 194 C of Income Tax Act. As per Sec 194 C of Income Tax Act 1961 any person responsible for paying any sum to for carrying out any work in pursuance of a contract, has to deduct TDS and provide TDS certificate.

3. The respondent filed counter denying the above allegations. The 2<sup>nd</sup> respondent, M/s. Ganesh Cashew Company

is covered under the provisions of the Act. The 2<sup>nd</sup> respondent defaulted in remittance of contribution for the period from 07/1999 – 03/2001. The employees represented by Kottarakkara Cashew Workers Union filed an OP No.11652/2001 before the Hon'ble High Court of Kerala against non-remittance of contribution. The Hon'ble High Court disposed of the OP with a direction to the Commissioner to consider the issue. The 1<sup>st</sup> respondent therefore issued a notice to the 2<sup>nd</sup> respondent. After hearing the 2<sup>nd</sup> respondent and perusing the records, issued an order assessing the dues after taking into account the remittance already made by the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent filed an appeal before EPF Appellate Tribunal and the same was dismissed. The 2<sup>nd</sup> respondent challenged the orders before the Hon'ble High Court of Kerala and the Hon'ble High Court vide judgement dated 03.04.2013 set aside the order under Sec 7A and that of EPF Appellate Tribunal, directing the 1<sup>st</sup> respondent to issue notice to the appellant and pass a fresh order. The 1<sup>st</sup> respondent therefore issued summons to the concerned parties. The representative of the appellant as well as the 2<sup>nd</sup> respondent

appeared in the enquiry. The 2<sup>nd</sup> respondent was the proprietor of M/s. Ganesh Cashew Company and he entered into an agreement with the appellant for processing raw cashewnuts. The 2<sup>nd</sup> respondent offered his factory equipments and employees for processing the cashew nuts. During the period, Tax at source was deducted from the 2<sup>nd</sup> respondent by the appellant and the copies of Form 16A were produced before the 2<sup>nd</sup> respondent authority. Copies of TDS (Form No.16A) are produced and marked as Exhibit R2. The contention of the 2<sup>nd</sup> respondent was that he was only a contractor doing contract work for the appellant and therefore the appellant as a principle employer is responsible for provident fund membership. As per the agreement and the Exhibit R2, it is clear that the 2<sup>nd</sup> respondent was a contractor and the appellant was the employer for the period in question. As per Sec 2(f), Sec 6, Sec 8A of the Act and Para 30 & Para 36B of EPF Scheme, the appellant cannot escape the liability of the contract employees engaged by them.

4. The notice sent to the 2<sup>nd</sup> respondent, M/s. Ganesh Cashew Company is returned by the postal authority with an

endorsement that the company is locked. It is seen that the earlier notice send by the EPF Appellate Tribunal, New Delhi was also returned by the postal authorities. Hence there was no representation for the 2<sup>nd</sup> respondent in this proceeding.

5. The 2<sup>nd</sup> respondent defaulted in remittance of contribution for the period from 07/1999 – 03/2001. The 1<sup>st</sup> respondent therefore initiated an enquiry under Sec 7A of the Act and assessed the dues. The proprietor of the 2<sup>nd</sup> respondent M/s. Ganesh Cashew Company attended the hearing and submitted that the employees' share of contribution is already been remitted and the employer's contribution is outstanding. On the basis of the returns filed by the 2<sup>nd</sup> respondent, admitting the liability, the 1<sup>st</sup> respondent issued the assessment order. The 2<sup>nd</sup> respondent challenged the assessment before EPF Appellate Tribunal in ATA No. 377(7)2003 and the Tribunal vide its order dated 08.02.2011 dismissed the appeal. The 2<sup>nd</sup> respondent challenged the orders before the Hon'ble High Court of Kerala in WP(C) No. 25675/2011 and the Hon'ble High Court vide order dated 03.04.2013 set aside the order of the 1<sup>st</sup> respondent and remanded the matter to the 1<sup>st</sup> respondent with

a direction to issue summons to the appellant and decide the matter afresh. The 1<sup>st</sup> respondent authority issued notice to the appellant as well as the 2<sup>nd</sup> respondent. After hearing, the appellant as well as the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent issued the impugned order holding that the appellant is liable to remit the contribution in respect of the employees engaged by the 2<sup>nd</sup> respondent as a contractor to the appellant.

6. In this appeal, the learned Counsel for the appellant took a contention that the agreement between the appellant and the 2<sup>nd</sup> respondent was an arrangement for processing raw cashewnuts in accordance with the specification agreed to by the parties and the appellant was liable to pay only the processing charge as per the terms of the agreement. He also pointed out that as per clause 13(b) of the agreement, the liability of provident fund and other statutory dues are with the 2<sup>nd</sup> respondent only. He further pointed out that the 1<sup>st</sup> respondent authority decided the issue only on the basis of Sec 194 C of Income Tax Act according to which the TDS certificate is issued to the 2<sup>nd</sup> respondent. He further pointed out that the contractor appearing in Sec 194 C is not the same as the



contractor appearing in EPF Act and Scheme provision. The learned Counsel for the 1<sup>st</sup> respondent argued that the relationship between the appellant and the 2<sup>nd</sup> respondent is that of principle and contractor only and therefore the principle employer is liable to remit the contribution in respect of the contract employees engaged by the contractor. According to him, as per Sec 2(f) of the Act, any person working in or in connection with the work of an establishment including that of the contractor is an employee of the principle employer and therefore the principle employer is liable to remit the contribution. He further pointed out that the TDS certificate for having deducted and remitted taxes would clearly establish the fact that the 2<sup>nd</sup> respondent is only a contractor and the principle employer is liable to remit the contribution.

7. On a close reading of the agreement entered into between the appellant and the 2<sup>nd</sup> respondent, it can be seen that the agreement is for processing raw cashewnuts with specifications and requirements and delivering the same in accordance with the directions of the appellant. The 2<sup>nd</sup> respondent will have to complete the process, pack them as

required and deliver the goods to them at a place and time required by them. The appellant shall have full and unrestricted right to access for inspection of the factories and any cashew store covered by the agreement. As per Clause 11 of the agreement, it is the responsibility of the 2<sup>nd</sup> respondent to comply with all the statutory obligations and if the 2<sup>nd</sup> respondent violates any of the provisions, the appellant will have the liberty to back out of the agreement. As per Clause 13(b), it is again specified that the 2<sup>nd</sup> respondent is liable to remit the provident fund and other statutory liability. The appellant will retain 10% of the processing charges agreed between the appellant and the 2<sup>nd</sup> respondent as per the agreement and the same will be released at the time of settling the bonus. The processing charge is paid at the rates fixed per bag of 80 Kg. According to the learned Counsel for the appellant in view of the above terms of agreement the appellant cannot be held responsible for the provident fund liability of the 2<sup>nd</sup> respondent during the relevant point of time.

8. On a perusal of the Annexure A2 order, it is seen that the 1<sup>st</sup> respondent initiated action for assessment of dues in

respect of the 2<sup>nd</sup> respondent. A representative of the appellant attended the hearing. He also submitted that the employees' share of contribution for the default period has already been remitted by him and he also filed the statutory returns showing the actual liability. The 1<sup>st</sup> respondent therefore assessed the dues. In the appeal filed before the EPF Appellate Tribunal, the 2<sup>nd</sup> respondent impleaded the appellant also as a party and the EPF Appellate Tribunal held that on the basis of the definition of employee, the contribution in respect of the contract employees engaged by the principle employer will have to be remitted by the contractor and there is no infirmity in the order. The Hon'ble High Court set aside the order of the 1<sup>st</sup> respondent as well as the EPF Appellate Tribunal and directed that the matter may be examined afresh after issuing notice to the appellant. The learned Counsel for the appellant relied heavily on the terms of the agreement to argue that, the agreement between the appellant and the 2<sup>nd</sup> respondent is only to process and deliver the processed cashew kernel to the appellant. However it is clear that the 2<sup>nd</sup> respondent was processing cashew exclusively for the appellant and the 2<sup>nd</sup> respondent can be treated only as a

contractor for getting the work of the appellant done in his factory. The definition of the employee under Sec 2(f) of the Act includes any person who is employed for wages in any kind of work in or in connection with the work of the establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of an establishment. As per Para 30(3) of EPF Scheme “it shall be the responsibility of the principle employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor ....”. Though the Annexure A1 agreement specifically excludes the liability of the appellant to pay contribution in respect of the employees engaged by the 2<sup>nd</sup> respondent, it is in violation of the above said provisions and therefore cannot be held to be valid. As already pointed out the 2<sup>nd</sup> respondent has already remitted part of the contribution and filed returns admitting the liability. Hence the 2<sup>nd</sup> respondent also cannot escape the liability to remit the contribution. The primary

responsibility to remit the contribution lies with the 2<sup>nd</sup> respondent.

9. Considering the facts, circumstances, pleadings and evidences in this appeal, I am inclined to modify the impugned order. Hence the appeal is partially allowed, the impugned order is modified to the extent that the appellant as well as the 2<sup>nd</sup> respondent are held to be jointly and severally liable for the assessed dues during the relevant period.

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer