



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

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

(Monday the, 4th day of April 2022)

APPEAL No. 658/2019

(Old No. ATA. 268(7)2013)

Appellant : Muthoot Commodities Limited
1st Floor, Alpha Plaza,
K.P.Vallon Road, Kadavanthra,
Kochi – 682 020

By M/s. Ashok B Shenoy

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 20.01.2022 and this Tribunal-cum-Labour Court on 04.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/24770/Enf-1 (2)/2013/14966 dated 19.03.2013 assessing dues under Sec 7 A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 10/2008 to 02/2009 and 04/2011 to 10/2011. The total dues assessed is

Rs.12,25,806/- (Rupees Twelve lakh twenty five thousand eight hundred and six only)

2. The appellant is an establishment covered under the provisions of the Act w.e.f. 06.10.2008. In December 2011, the appellant was issued two notices dated 07.12.2011 whereby the appellant was summoned to appear before the respondent authority for an enquiry on assessment of dues for the period from 10/2008 to 02/2009 and 04/2011 to 10/2011. The true copies of the notices are produced and marked as Annexure A1 and A2 respectively. A representative of the appellant attended the hearing and pleaded that the appellant is liable to remit contribution only on the basic wages paid to the employees. A detailed argument note dated 25.02.2013 was filed before the respondent, a copy of which is produced and marked as Annexure A3. Ignoring the contentions, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A4. According to the impugned order, the respondent was directed to pay contributions on allowances paid to its employees. The impugned order in as much as it recons the allowances other than DA for the levy of contribution

under the Act is illegal and it militates against the provisions of Sec 2(b) and Sec 6 of the Act. It is also seen that the respondent assessed dues in respect of excluded employees in respect of whom the appellant is not liable to pay contribution under the Act.

3. The respondent filed written statement denying the above allegations. It was noticed that the appellant establishment was not paying contributions on actual wages paid to its employees. The respondent authority initiated proceedings under Sec 7A of the Act. The appellant was represented in the enquiry. The respondent authority noticed that the appellant was splitting up the wages of employees as Basic, HRA, Conveyance, Medical Allowance, CCA, Telephone allowance and Incentive. As per Sec 2(b) of the Act, "Basic wages" means all emoluments earned by the employee other than specifically excluded under clauses 1, 2 & 3. The respondent found that all allowances except HRA, subject to the limit of Rs.6500/- shown in the salary statement has to be considered as basic wages. The Hon'ble High Court of Madras in ***Poompuhar Shipping Corporation Limited Vs Regional***

Provident Fund Commissioner, 2004 (1) LLJ 663 held that the incentives paid to the employees is only for the work done by the employees during the course of eight hours and is not over and above the prescribed time of work and therefore forms part of basic wages.

4. When the matter was taken up for hearing, the learned Counsel for the appellant produced a copy of an order dated 19.04.2021 issued by the respondent authority under Sec 7A of the Act against the appellant. In the above cited order the respondent authority considered whether the allowances such as HRA, Conveyance, Medical, CCA and Incentive paid by the appellant will come within the definition of “basic wages”. After examining nature of the allowances, the respondent authority came to a conclusion that the allowances and incentives other than conveyance allowance will not satisfy the test of basic wages as provided by the Hon'ble Supreme Court. It is also relevant to point out that the respondent authority arrived at the above conclusion after remand by the EPF Appellate Tribunal in Appeal No. 552(7)2012. The Hon'ble High Court of Kerala also in a recent decision, ***Gobin (India)***

Engineering Pvt. Ltd. Vs Presiding Officer, CGIT & Labour Court and Another, W.P.(C)No. 8057/2022, referring to the decision of Hon'ble Supreme Court in **Regional Provident Fund Commissioner, West Bengal Vs Vivekananda Vidyamandir and Others**, 2020 (17) SC 643, held that while deciding the issue the test to be applied is whether the allowances in question being paid to its employees were either variable or were link to any incentive for production resulting in greater output by an employee and that the allowances in question were paid across the Board to all employees in a particular category or were being paid especially to those who avail the opportunity. Since there is conflict in the two decisions taken by the respondent authority, it is appropriate that the matter is remitted back to the respondent authority to re-decide the matter.

5. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to sustain the order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-decide the matter within a period of 6 months from the date

of receipt of this order after issuing notice to the appellant. If the appellant fails to appear or fail to produce the documents called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant shall be adjusted or returned after finalisation of the enquiry.

Sd/-
(V.Vijaya Kumar)
Presiding Officer