



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

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

(Tuesday the, 26th day of April 2022)

APPEAL No. 68/2018

(Appeal No. A/KL-43/2016)

Appellant : M/s. EVM Automotive India Private Limited
TVS Junction, Angels Plaza
South Kalamassery
Ernakulam – 682 022

By Adv. Ajith S Nair

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

By Adv. S.Prasanth

This case coming up for final hearing on 11.11.2021 and this Tribunal-cum-Labour Court on 26.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/29103/Enf. 1(5)/2015 – 2016/17490 dated 21.03.2016 assessing dues under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’) on non-enrolled office staff for the month of 09/2013, non-

enrolled contract employees for the period from 02/2014 to 09/2014 and evasion of wages for office staff for the month of 09/2014. The total dues assessed is Rs.3,05,545/- (Rupees three lakh five thousand five hundred and forty five only)

2. Appellant is a company incorporated under the provisions of Companies Act 1956. The appellant is engaged in the business of sales and services of four wheelers. It is covered under the provisions of the Act. An Enforcement Officer of the respondent organisation inspected the records of the appellant establishment for the period from 02/2014 – 09/2014. The Enforcement Officer reported that 14 employees were not enrolled to the fund and there is evasion of wages in respect of office staff. A copy of the report is produced and marked as Annexure A2. The respondent authority initiated enquiry under Sec 7A of the Act on the basis of the report. A representative of the appellant attended the enquiry and submitted the details sought by the respondent. The appellant also filed a detailed statement. A copy of the reply submitted by the appellant is produced and marked as Annexure A3. The alleged non-enrolment of contract employees' is in respect of the house keeping agency, M/s. Alive Facility and Services.

They remitted the contribution in respect of their staff members and copies of the chalans showing remittance of contribution by them is produced and marked as Annexure A4 series. Without considering the chalans produced, the respondent authority concluded that those contract employees were not enrolled to the fund. The respondent authority has not considered the contentions of the appellant in the impugned order. The chalans for having remitted the contribution in respect of contract employees were produced before the respondent authority. The appellant sought for a copy of the report of the Enforcement Officer but there is no whisper whether the required information is furnished by the appellant. The enquiry is concluded stating that the representative of the appellant admitted the dues. The appellant never admitted the dues. The respondent failed to consider the fact that the alleged dues pertain to salary of employees who are drawing wages above Rs.15000/- per month. The details regarding the evasion of wages was requested by the appellant but the same was not provided by the respondent authority. The impugned order issued by the respondent is a non-speaking order.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f. 01.10.2012. An Enforcement Officer inspected the appellant establishment on 29.10.2014 and reported 14 non-enrolment and evasion of wages. As per the report, one regular employee is not enrolled to the fund w.e.f. 01.09.2014 and 13 contract employees were not enrolled to the fund for the period 02-2014 – 09/2014. It was also reported that there was evasion of wages for 09/20104. The respondent authority therefore initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the enquiry and requested for a copy of the report of the Enforcement Officer on 14.09.2015. On 28.12.2015, the representative of the appellant admitted the liability after seeing the report of the Enforcement Officer. The respondent authority therefore issued the impugned order. The assessment is made on the report of the Enforcement Officer as the appellant failed to produce any records and admitted the liability as per the report. The Division Bench of Andhra Pradesh High Court in ***J&J Dechane Vs Regional Provident Fund Commissioner and Another***, 1960(1)LLJ 765 held that any measures taken by the

Inspector to implement the provisions of the Act would not *ipso facto* be unwarranted or arbitrary. The letter dated 31.01.2015, Annexure A3, was submitted by the appellant on the first date of hearing i.e. on 09.03.2015 and thus taken note of by the respondent authority. The respondent authority has not referred to any chalan as token of remittance of EPF dues. The respondent send a letter 28.04.2015 to the appellant, seeking among other details , attested copy of Muster Roll and Wages Salary Register maintained by the contractor counter signed by the principle employer. The month wise amount paid to the contract employer, ECR statement from the date of commencement of contract work, monthly statement have to be submitted by the principle employer etc. are called for. A copy of the letter dated 28.04.2015 is produced and marked as Exhibit-R1. Further the representative of the appellant on the last date of hearing i.e. on 28.12.2015 admitted the dues reported by the Enforcement Officer. The Hon'ble High Court of Rajasthan in ***Ess Dee Carpet Enterprises Vs Union of India***, 1985 LIC 1116, held that a question of fact not raised before the RPFC in the enquiry under Sec 7A cannot be raised in the appellant forum. The impugned order was issued by

the respondent authority after providing adequate opportunity to the appellant. A copy of the report of the Enforcement Officer was sought by the appellant on 14.09.2015 during the course of the enquiry. The same was handed over to the appellant on 16.09.2015 and the acknowledgement is given by the representative of the appellant in note sheet No. 11 of the Enforcement file of the establishment, a copy of which is produced and marked as Exhibit R2.

4. An Enforcement Officer of the respondent who conducted the inspection of the appellant establishment on 29.10.2014 reported non-enrolment of 14 employees and evasion of wages for the month of 09/2014. The respondent authority initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and filed a written representation dated 31.01.2015. The representative of the appellant also sought for a copy of the report of the Enforcement Officer and a copy of the report was provided under acknowledgment as per Exhibit R2 to the appellant. On 28.12.2015, when the matter was again taken up by the respondent authority, the representative of the appellant admitted

the liability. The respondent authority issued the impugned order on the basis of the report of the Enforcement Officer which was admitted by the representative of the appellant.

5. In this appeal, the appellant contented that 13 contract employees are engaged by them through a manpower agency called M/s. Alive Facility and Services which is independently covered under code no KR/KCH/24616. It is also pointed out that the contractor M/s. Alive Facility and Services remitted the contributions in respect of the employees deployed by them to the appellant establishment. The appellant also raised this through the representative vide Annexure A3 submission dated 31.01.2015. Since the appellant took a view that the contribution in respect of the contract employees are already remitted by the contractor who is independently covered, the right course of action open to the respondent authority was to issue notice to the contractor directing them to produce the details of the contract employees deployed at the premises of the appellant and also the wages and the contribution particulars from them. The chalans produced by the appellant does not tally with the amounts assessed as per the impugned order. According to the learned

Counsel for the respondent, the appellant admitted the liability as per the report of the Enforcement Officer, a copy of which was already provided to the appellant. The respondent authority did not take any further action to verify the correctness of the remittance made by the contractor. Taking into account the fact that the contractor is already independently covered under the provisions of the Act and the compliance by the contractor was already reported to the respondent authority, it is not correct to assess the dues in respect of the contract employees without taking into account the remittance already made by the contractor. Hence the assessment of dues in respect of non-enrolled contract employees cannot be sustained. The appellant did not raise any serious dispute regarding the assessment of dues in respect of one regular employee and also the assessment on evaded wages of office staff for the month of September 2013. The only contention raised in this appeal is that the report of the Enforcement Officer was not provided to the appellant. The learned Counsel for the respondent through Exhibit R2 clearly established the fact that the copy of the report of the Enforcement Officer was provided to the representative of the appellant on

16.09.2015 under Exhibit R2 acknowledgement and the contention of the appellant that they were not aware of the details of evasion cannot be accepted. Further the representative of the appellant also admitted the liability as per the report of the Enforcement Officer. Hence I am not inclined to accept the contention of the appellant with regard to the assessment of dues on one regular employee and also on evaded wages.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to sustain the assessment of dues in respect of 13 contract employees. However the assessment of dues in respect of one regular employee and on evaded wages is upheld.

Hence the appeal is partially allowed, the assessment in respect of 13 contract employees is set aside, the assessment of dues in respect of one regular employee and that of assessment on evaded wages is upheld.

Sd/-
(V.Vijaya Kumar)
Presiding Officer