



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

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

(Friday the, 8th day of April 2022)

APPEAL No. 741/2019

(Old No. ATA.373(7)2012)

Appellant : M/s. Hotel Leela Venture Limited
(formerly known as M/s. Kovalam
Hotels Ltd.)
The Leela Kempinski Kovalam Beach
Kovalam.P.O.,
Trivandrum – 695 527

By M/s. Menon & Pai

Respondents : 1. The Regional PF Commissioner
EPFO, Sub Regional Office,
Pattom, Trivandrum – 695 004

By Adv. Ajoy.P.B.

2. M/s. Ambassador Security &
Detective Services,
Chirathallatu building,
Near Medical Centre,
Kottayam – 686 001.

3. M/s. CPL Logistics Private Limited,
(Formerly known as M/s. M.Far
Logistic Pvt. Ltd.), Maradu
Ernakulam – 682 034.

4. M/s. Raveenbeck Security India Limited.
Raveen beck house, Chettichira
Subhash Chandra Bose Road,
Vytilla.P.O.
Cochin – 682 019

5. M/s. Gayathri Associates
Vellar Junction, Kovalam.P.O.
Trivandrum – 695 527.
6. M/s. Kairali Constructions
Venganoor
Venganoor.P.O.
Trivandrum – 695 523

This case coming up for final hearing on 09.02.2022 and this Tribunal-cum-Labour Court on 08.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/TVM/16686/Enf 1(3) 2011/13577 dated 18.02.2012 confirming the dues assessed under Sec 7A of the Act in respect of evaded wages of contract employees for the period from 11/2003 to 03/2007. The impugned order effectively upholds the earlier order dated 14.11.2007 assessing total dues of Rs.6,01247/-. The assessment of dues against M/s.Kairali Constructions being Rs.1,64,180.90.

2. The appellant is a company registered under the Companies Act 1956. The appellant owns a hotel in Kovalam, Trivandrum and was regular in compliance. The appellant engaged 5 different agencies for execution of different works and

those contractors are covered under the provisions of the Act. The Enforcement Officer conducted an inspection on 22.11.2006. In his report, it was pointed out that the employees engaged by various contractors are either not enrolled to the fund or the contribution paid is not on the total wages paid to these employees. The 1st respondent initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and filed a written statement dated 27.04.2007 pointing out that all the contractors are independently covered and therefore the appellant is not responsible in respect of those contract employees. On the request of the appellant, the first respondent issued notice to the contractors. The appellant was also directed to produce the details regarding payment made to the contractors. Without adverting to any of the contentions raised by the appellant, the respondent issued an order dated 14.11.2007, a copy of which is produced and marked as Annexure A2. The appellant challenged the order in Appeal No. ATA.48(7)2008. The EPF Appellate Tribunal set aside the Annexure A2 order and remanded the matter back to the 1st respondent with a direction to assess the liability for the employees engaged by the contractors including M/s. Kairali

Constructions and to take steps against those contractors who made the short payment. A true copy of the order dated 14.01.2011 is produced and marked as Annexure A3. In compliance with the direction, the respondent issued notice dated 28.04.2011 fixing the date of enquiry as 18.05.2011. A true copy of the notice is produced and marked as Annexure A4. The appellant appeared before the 1st respondent and filed a petition to implead the five establishments who committed the default. Accordingly the 1st respondent issued notice to all the five establishments. Two establishments appeared and others remained absent. The 1st respondent in total disregard to Annexure A2 order dated 18.02.2012 issued the impugned order holding that the appellant is liable to pay the contributions. True copy of the order dated 18.02.2012 is produced and marked as Annexure A5. The 1st respondent did not go into the question whether the five establishments are liable to pay contribution or whether the contribution paid by them was legally correct. The 1st respondent ought to have considered that Annexure A2 order passed by the 1st respondent was set aside vide Annexure A3 and

directed the 1st respondent to pass fresh orders treating the agencies as separate employers. The 1st respondent ought to have directed the respondent 2 to 6 to remit the short fall in contribution. The 1st respondent ought to have considered the fact that the agencies engaged by the appellant were independently covered and therefore they are liable to remit contribution and appellant could not have been considered as Principle employer. The respondent cannot direct two employers to remit contribution in respect of the employees engaged by one establishment. As per Sec 2(b) and Sec 6 of the Act and Para 29 of EPF Scheme, contribution is payable only on Basic and Dearness Allowance.

3. Respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. As per the report of inspection filed by the Enforcement Officers, the appellant is engaging employees through contractors. There are five such contractors. It is the responsibility of the appellant to ensure compliance in respect of the contract employees failing which the appellant will be responsible. The appellant failed to ensure compliance of the

contract employees and therefore the appellant as principle employer became liable to remit the contribution in respect of the contract employees. As per the definition of employee under Sec 2(f), any person who is employed for wages in or in connection with the work of an establishment including the employees employed by or through a contractor is an employee. Further as per Sec 6 and Sec 8A of the Act read with Para 30(2), 30(3) and 32 of EPF Scheme, the principle employer is only responsible for compliance in respect of contract employees. The respondent authority therefore initiated action under Sec 7A of the Act, summoned all the contractors, verified the records and issued Annexure A2 order dated 14.11.2007. The appellant challenged the said order before the EPF Appellate Tribunal in Appeal No. 48(7)2008. The Appellate Tribunal vide its order dated 14.11.2007 remanded the matter to the authority to assess the liability of the employees engaged by M/s. Kairali Constructions Pvt. Ltd. and steps permitted by law be taken against those four contractors who made the short payment. In compliance with the Annexure A3 order of the Tribunal, the 1st respondent initiated an enquiry under Sec 7A of the Act. All the contractors are impleaded as the

party to the proceedings. Since the EPF Appellate Tribunal vide Annexure A3 order did not interfere with the Annexure A2 assessment, the same was upheld by the 1st respondent. The Hon'ble EPF Appellate Tribunal only directed the 1st respondent to assess the liability of the employees engaged by M/s. Kairali Constructions Pvt. Ltd. M/s. Kairali Constructions Pvt. Ltd. was not allotted code number at the time of enquiry. The employees as defined as 2(f) of the Act includes any person who is employed for wages and includes any person employed by or through a contractor. On a combined reading of Sec 2(f), Sec 6, Sec 8A of the Act and Para 30(2) and Para 30(3), it is very clear that the principle employer is very much responsible for the compliance in respect of all employees engaged in or in connection with the work of the employer. The 1st respondent authority fully complied with the direction of the Hon'ble EPF Appellate Tribunal while issuing the impugned order. As per Para 2(b) of the EPF Scheme, Basic wages means all emoluments earned by an employee with specific exclusions as per Para 2(b)(ii).

4. The appellant establishment was engaging five different contractors for various works of the appellant establishment such

as housekeeping, construction etc. Four of these contract establishments are covered under the provisions of the Act. M/s. Kairali Constructions Pvt. Ltd. is one contractor which was not covered during the relevant point of time. An Enforcement officer who conducted the inspection in the appellant establishment reported that the compliance of the appellant establishment with regard to contract employees was not satisfactory. The 1st respondent therefore initiated an enquiry under Sec 7A of the Act. The appellant took a view that the contractors are independently covered, hence the appellant is not liable for any short fall in contribution by the contractors. The respondent issued notice to all the contractors. The contractors entered appearance and produce records. The respondent authority found that the contractors were not paying contribution on actual wages and therefore assessed the dues and held the principle employer liable for the difference in contributions. The Annexure A2 order issued by the 1st respondent was challenged before the EPF Appellate Tribunal, New Delhi in ATA No. 48(7)2008. The EPF Appellate Tribunal vide Annexure A3 order dated 14.01.2011 found that the definition of employee as per Sec

2(f) 'makes it clear that the person engaged through a contractor in connection with the work of the establishment are employees of the appellant. In the case of **P M Patel Vs Union of India** reported in 1986 (1) SCC at page 32, their lordship held that the definition of the word employee were wide. This includes not only person directly employed by the employer but also those employed through a contractor'. The EPF Appellate Tribunal also found that four contractors were independently covered and no action was taken against them. In the operative part of the order, the EPF Appellate Tribunal held that

“Hence order the matter is remanded to assess the liability for the employees engaged by M/s. Kairali Constructions Pvt. Ltd. and the steps if permitted by law be taken against those 4 contractors who made the short payment. The appellant is directed to appear before the authority before one month of this order failing which the matter be disposed off as per law”.

From the above order it is very clear that the Hon'ble EPF Appellate Tribunal found that the principle employer is liable for the employees engaged through contractors in view of Sec 2(f) of

the Act and the decision of the Hon'ble Supreme Court of India. The EPF Appellate Tribunal also found that 4 contractors are independently covered and therefore action may be taken against them. The Appellate Tribunal in the Annexure 3 order directed the respondent to assess the liability for the employees engaged by M/s. Kairali Constructions Pvt. Ltd. From a complete reading of the above order, it is clear that the re-assessment of dues is required to be done only with regard to M/s. Kairali Constructions Pvt. Ltd. Accordingly, the 1st respondent initiated action under Sec 7A of the Act, issued notice to the principle employer as well as the contractors and issued the impugned order holding that the dues were assessed in respect of M/s. Kairali Constructions Pvt. Ltd. separately in Annexure A1 order itself and also deciding that the appellant establishment is liable for the short remittances of contribution by the contractors.

5. According to the learned Counsel for the appellant, the impugned order is issued in violation of the Annexure A3 order of EPF Appellate Tribunal. I am not inclined to agree with the stand taken by the learned Counsel for the appellant. The matter is remitted back to the 1st respondent only to reassess the dues in

respect of M/s. Kairali Constructions Pvt. Ltd. since M/s. Kairali Constructions Pvt. Ltd. was not covered independently at the relevant point of time. The four other contractors were already covered and independent code numbers were allotted to them and therefore the respondent authority was directed to take action for recovery from the independently covered establishments. The 1st respondent authority also found that the liability of M/s. Kairali Constructions Pvt. Ltd. is separately assessed in Annexure A1 order after perusing the documents produced by the contractor before the 1st respondent. Therefore the 1st respondent upheld the assessment in the impugned order. The 1st respondent authority further held that in view of the statutory provisions and also in view of the various decisions, the principle employer cannot escape the liability in respect of contract employees engaged by them, even if, the contractors are independently covered.

6. As per Sec 2(f) of the Act, an employee means any person who is employed for wages in connection with the work of the establishment and includes any person employed by or through a contractor in or in connection with the work of the

establishment. As per Sec 8A, the amount of contribution payable by an employer in respect of an employee employed by or through a contractor may be recovered by such an employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. As per Para 30(1) of EPF Scheme, the employer shall in the first instance pay both the contribution payable by himself and also on behalf of the member employed by him directly or by or through a contractor. As per Para 30(2) in respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employees and shall pay to the principle employer. As per Para 30(3) it shall be the responsibility of the principle employer to pay both the contribution payable by himself in respect of employees directly employed by him and also in respect of employees employed by or through a contractor. It is clear from the above statutory provisions that the appellant cannot escape the liability of remitting the contributions in respect of contract employees engaged by them in or in connection with the work of the appellant establishment. According to the learned Counsel for

the appellant, the liability shifts when an independent code number is allotted to contractors. Allotment of code number is not a statutory obligation and is only an administrative function to identify the establishments. Hence it is not correct to say that by allotment of an independent code number, the liability of the principle employer shift to the contractor. The liability of remitting provident fund contribution is already fixed by statutory provisions discussed above. The only requirement is that the respondent authority will have to invariably summon the contractor when the contractor is independently covered. The contractor as an employer also cannot escape the liability of remitting contributions in respect of the employees engaged by them with a principle employer. Ultimately it is the responsibility of the principle employer to ensure proper compliance under the provisions of the Act in respect of regular and also the contract employees employed by a principle employer. However in the facts and circumstances of this case, the contractors are also equally responsible for the short remittance of contribution by them.

Hence the impugned order is modified holding that the contractors as well as the appellant are jointly and severally liable for the dues assessed as per Annexure A2 and A5 orders. Action shall be taken against the respective contractors to recover the dues failing which the appellant will be liable as a principle employer to remit the contribution assessed as per the impugned order.

Sd/-
(V.Vijaya Kumar)
Presiding Officer