



सत्यमेव जयते

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

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

(Wednesday the, 5th day of January 2022)

APPEAL No. 786/2019

Appellant : M/s. Intimate Machine Tools (P) Ltd.
Plot No. 39, Monvila,
Industrial Estate, Kulathoor.P.O.
Thiruvananthapuram – 695 583.

By Adv.Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Pattom.P.O.
Thiruvananthapuram – 695 004

By Adv. Ajoy.P.B.

This case coming up for final hearing on 07.10.2021 and this Tribunal-cum-Labour Court on 05.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/RO/TVM/12758/Enf.1(2)/19-20/2914 dated 26.08.2019 assessing regular dues for the period from 09/2017 – 02/2019 and in respect of non-

enrolled employees for the period from 09/2017 – 2/2019. The total dues assessed is Rs.55,77,040/- (Rupees fifty five lakh seventy seven thousand and forty only).

2. Appellant is a company incorporated under the provisions of the Companies Act 1956 and engaged in the business of manufacturing tools for printing presses. Appellant is covered under the provisions of the Act. Because of acute financial crisis, the appellant could not remit the contributions in time. A sister concern of the appellant M/s. Solar Offset Printers caught fire causing heavy financial liability. Many of the employees left and joined rival companies. An Enforcement Officer of the respondent organisation conducted an inspection of the appellant establishment on 29.03.2019 and issued an inspection report alleging that the regular contributions were not remitted to the fund. He also pointed out that there are 15 non-enrolled employees. Because of the financial constraints, the appellant could not take action on the report submitted by the Enforcement Officer. It is evident from the inspection report that the report regarding non-enrolled employees is hypothetical without verifying the records. The dispute regarding the non-

enrolment ought to have been resolved by the Regional Provident Fund Commissioner under Para 26B of the Scheme. The appellant submitted before the respondent at the time of hearing that the appellant is not disputing the liability for payment of regular contribution. Since it is not remitted and has agreed to remit the contribution. The alleged non-enrolled employees' are excluded employees' and the assessment is made on the salary limit of Rs.15,000/-.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The appellant defaulted in compliance. An Enforcement Officer was therefore deputed to verify the complaint against the appellant establishment. The Enforcement Officer vide his report dated 27.02.2019, confirmed that the establishment is in default for the period from 09/2017 – 02/2019 and submitted a due statement on the basis of the records maintained by the appellant. The Enforcement Officer also reported that 15 employees were not enrolled to the fund from the date of eligibility. The employees were identified with their names and date of joining. However the appellant failed to

furnish the details of the wages paid to those employees and therefore the Enforcement Officer submitted the assessment fixing the salary at the statutory limit of Rs. 15000/-. The respondent issued summons dated 16.04.2019 under Sec 7A of the Act directing the appellant to attend a personnel hearing on 09.05.2019 with all relevant records to determine the statutory dues. None appeared in response to the summons. The enquiry was thereafter adjourned to 04.06.2019, 03.07.2019 and then to 16.07.2019. There was no representation on the side of the appellant. The enquiry was finally adjourned to 21.08.2019 and the Director of the appellant company attended the hearing. After verifying the records, the Director of the appellant establishment admitted the liability as reported by the Enforcement Officer. Since the liability was admitted, the respondent issued the impugned order. According to the appellant, he is disputing the liability with regard to the non-enrolled employees. The liability in respect of non-enrolled employees is Rs. 3,99,150/-.The regular dues that the appellant is required to pay is Rs.51,77,890/- out of which Rs.24,77,735/- is the employees' share of contribution deducted from the salary

of the employees. The appellant is withholding this money illegally thereby committed the offence of breach of trust under Sec 405/406 of Indian Penal Code. The appellant never disputed the non-enrolment and the dues assessed against them at the time of the 7A proceeding. A copy of the report of the Enforcement Officer was made available to the appellant at the time of hearing. The appellant was provided more than adequate opportunity to represent his case. The appellant never raised any objection regarding the report of the Enforcement Officer or quantification of dues by the Enforcement Officer.

4. The appeal was admitted vide order dated 29.01.2020 on the condition that the appellant shall deposit 30% of the assessed dues under Sec 70 as a precondition for admitting the appeal within a period of one month from the date of the order. The appellant was also directed to produce proof of remittance on the next date of posting. When the matter was taken up for final hearing, the learned Counsel for the respondent pointed out that the appellant failed to remit the pre-deposit as directed by this Tribunal. The appellant also did not produce any proof of remittance of Sec 70 pre-deposit as directed by this Tribunal. As

per Sec 7(O) of the Act, “No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined by an Officer referred to in Sec 7A provided that the Tribunal may for reasons to be recorded, waive or reduce the amount to be deposited under this section”. In ***M/s. Muthoot Pappachan Consultancy and Management Services Vs Employees Provident Fund Organization and Others***, 2009(1)KHC 362 the Division Bench of the Hon’ble High Court of Kerala held that the deposit of 75% U/s 7(O) of EPF Act is a pre-condition for maintaining the appeal and not a condition for staying the operation of the order under appeal. The appeal is therefore required to be dismissed on the preliminary ground of non-deposit of 70 amount.

5. The respondent authority issued the impugned order under Sec 7A assessing the regular dues of the appellant establishment to the tune of Rs.51,77,890/- for the period from 09/2017 – 02/2019. There is no dispute regarding this assessment. The learned Counsel for the respondent rightly pointed out that out of the above assessment Rs.24,77,735 belongs to employees share deducted from the salary of the

employees and not remitted to the fund. The appellant thereby committed the offence of breach of trust under Sec 405/406 of Indian Penal Code. The only dispute raised in this appeal is with regard to the assessment of 15 non-enrolled employees from their date of their eligibility. It is seen that the Director of the appellant company admitted this liability also at the time of 7A enquiry, but disputed the same in this appeal. According to the appellant, the wages taken by the Enforcement Officer while assessing the amount is not correct. It is seen that the appellant was given more than adequate opportunity by the respondent authority before issuing the impugned order. If the non-enrolled employees were excluded employees as claimed in this appeal, it was the responsibility of the appellant to produce the records and prove the same before the respondent authority. Having failed to do so, the appellant cannot come up in appeal and argue that the salary of the non-enrolled employees is not properly taken by the Enforcement Officer. The appellant being the custodian of records, it is their responsibility to establish that the non-enrolled employees were excluded employees. It is clear from the

pleadings that the appellant filed this appeal only to delay the process of recovery of regular dues by the respondent authority.

6. Considering the facts, circumstances, pleadings, evidences and arguments in this appeal, I am not inclined to interfere with the impugned orders

Hence the appeal is dismissed

Sd/-

(V.Vijaya Kumar)
Presiding Officer