



सत्यमेव जयते

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

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

(Thursday the 31st day of March, 2022)

APPEAL No.9/2022

Appellant : M/s.Sitco Associates
Heavenly Plaza, 6th Floor CS-6
Door No.11/275, J121
Kakkanad, Thrikkakara P.O.
Ernakulam -682021

By Adv. C. B. Mukundan &
Adv. M. P. Mathew

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloor
Kochi - 682017

By Adv. S. Prasanth

This case coming up for admission on 31.03.2022 and the same day
and this Industrial Tribunal-cum-Labour Court passed the following:

ORDER

Present appeal is filed against order no.KR/KCH/ENF-3(5)/29107(7A)/
2018/4159 dt.12.06.2018 assessing dues U/s 7A of EPF & MP Act, 1952

(hereinafter referred to as 'the Act') for the period from 05/2006 to 05/2016.

The total dues assessed is Rs.4,99,553/-.

2. When the matter was taken up for admission the learned Counsel for the respondent opposed the same on the ground that the appeal is barred by limitation. According to the learned Counsel for the appellant, the impugned order was received by the appellant on 16.06.2018 and a review U/s 7B of the Act was filed on 09.07.2018. The respondent authority neither took up the matter for hearing or issued any final order U/s 7B of the Act. The respondent therefore issued a reminder dt.03.05.2019. The respondent vide its letter no.KR/KCH/29107/ENF-3(5)/2019/2297 dt.27.05.2019 send a reply stating that there is no such review application pending and the appellant was directed to produce the original receipt of Form 9 under Para 79A before the respondent authority on or before 05.06.2019. According to the learned Counsel for the appellant he failed to take any acknowledgment from the respondent's office at the time of filing the review application. The learned Counsel for the appellant submitted that the delay in filing the appeal may be condoned. According to the learned Counsel for the appellant, the appellant establishment was covered w.e.f. 10/2012. However as per the impugned order the assessment of dues is made from 05/2006. He further produced the certificate of registration of the partnership to

substantiate his claim that the partnership itself is formed only w.e.f. 01.04.2012. The learned Counsel for the respondent pointed out that the appellant establishment is covered on the basis of the documents produced by the appellant. Subsequently during the inspection of the appellant establishment the Enforcement Officer attached to the office of the respondent noticed that the appellant establishment engaged 26 employees in 05/2006 itself. The representative of the appellant during the course of 7A enquiry on 16.01.2017 raised the same issue. A copy of the inspection report of the Enforcement Officer was provided to the representative for his comments. But the appellant did not object to the proponement of coverage and assessment of dues proposed by Enforcement Officer. Accordingly the assessment is done for the period from 05/2006 onwards.

3. The impugned order is dt.12.06.2018 and the appellant is required to file the appeal within a period of 60 days. This Tribunal has powers to condone the delay by another 60 days. However the delay beyond 120 days cannot be condoned under any circumstances. The contention of the learned Counsel for the appellant that they filed the review and was waiting for the outcome cannot be accepted as a reason for condonation of delay. As already pointed out, according to the appellant the review application U/s 7B of the Act was filed on 09.07.2018 and thereafter the appellant waited upto

03.05.2019 to remind the respondent authority. Immediately on receipt of the reminder, the respondent authority informed the appellant to produce the original receipt of Form 9 under Para 79A of EPF Scheme before him on or before 05.06.2019. The appellant did not respond to the said letter. The appellant again waited till 21.01.2022 to file the present appeal. By the action or non action the appellant has exposed his lack of bonafides regarding the claim that the appellant establishment was waiting for a decision on the review application filed U/s 7B of the Act.

4. As per Rule 7(2) of EPF Appellate Tribunal (procedure) Rules 1997 which is still applicable for filing of appeals under Section 7(I) of EPF & MP Act, 1952, any person aggrieved by an order passed under the Act, may prefer an appeal to the Tribunal within 60 days from the date of issue of order provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. As per the above provision, appeal from an order issued under the provisions of the Act need to be filed within 120 days. There is no power to condone delay beyond 120 days under the provisions of the Act.

5. The Hon'ble High Court of Kerala considered the issue in **Dr.A.V.Joseph Vs APFC**, 2009 (122) FLR184. The Court observed that

“maximum period of filing appeal is only 120 days from the date of impugned order. When the statute confers the power on the authority to condone the delay only to a limited extent, it can never be widened by any court contrary to the intention of the law makers”.

The Hon'ble High Court of Delhi in **APFC Vs Employees Appellate Tribunal**, 2006 (108) FLR 35 held that in view of the specific provisions under Rule 7(2) the Tribunal cannot condone the delay beyond 120 days. As a general proposition of law whether the Courts can condone the delay beyond the statutory limit provided under a special Act was considered by Hon'ble Supreme Court in **Commissioner of Customs & Central Excise Vs Hongo India Pvt Ltd**, (2009) 5 SCC 791 and held that whenever a statutory provision is made to file an appeal within a particular period the Court shall not condone the delay beyond the statutory limit applying Limitation Act. In **Oil & Natural Gas Corporation Ltd Vs Gujarat Energy Transmission Corporation**, (2017) 5 SCC 42 the Hon'ble Supreme Court held that “the Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and therefore, the prescription with regard to the limitation has to be the binding effect and same has to be followed, regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days,

it would come within the ambit and sweep of the provision and policy of legislation. Therefore it is uncondonable and cannot condone taking recourse to Article 142 of the constitution". The Hon'ble High Court of Patna considered the implication of the limitation U/s 7(I) of the EPF & MP Act read with Rule 7(2) of Employees Provident Fund Appellate Tribunal Procedure Rule, 1997 in **Bihar State Industrial Development Corporation Vs EPFO**, (2017) 3 LLJ 174. In this case, the Employees Provident Fund Appellate Tribunal, New Delhi rejected an appeal from an order issued by Regional Provident Fund Commissioner, Bhagalpur on the ground of limitation. The Hon'ble High Court after examining various authorities and provisions of law held that,

"Para 15. Thus in view of the fact that the limitation is prescribed by specific Rule and condonation has also to be considered within the purview of the Rule alone and the provision of Limitation Act cannot be imported into the Act and Rules. This Court is of the view that the Tribunal did not had the powers to condone the delay beyond the period of 120 days as stipulated in Rule 7(2) of the Rules. "

The Hon'ble High Court of Kerala also examined the issue whether the EPF Appellate Tribunal can condone the delay beyond 120 days in **Kerala State Defence Service Co-operative Housing Society Vs Assistant P.F.Commissioner**, 2015 LLR 246 and held that the employer is precluded from approaching the

Tribunal after 120 days and Section 5 of Limitation Act, 1963 is not applicable to proceedings before the Tribunal. In **M/s.Port Shramik Co-operative Enterprise Ltd Vs EPFO**, 2018 LLR 334 (Cal.HC), the Hon'ble High Court of Calcutta held that the limitation provided under Rule 7(2) of the Appellate Tribunal(Procedure) Rules, 1997 cannot be relaxed. In **EPFO represented by Assistant P.F. Commissioner Vs K. Nasiruddin Biri Merchant Pvt Ltd**, 2016 LLR 367(Pat.HC), the assessment of dues U/s 7A of the Act to the tune of Rs.3,36,30,036/- was under challenge. EPF Appellate Tribunal condoned the delay in filing the appeal and set aside the order. The Hon'ble High Court of Patna set aside the order of the Tribunal holding that the Tribunal has no power to condone delay beyond 120 days. So the present appeal is not maintainable on the ground of limitation.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer