सत्यमेव जयते

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

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

(Wednesday the 29th day of December, 2021)

APPEAL No.135/2019

(Old no.1383(7)2014)

Appellant : Sri.Sudheer N.T.
Proprietor
M/s.Umadevi Sarees
Jafar Khan Colony Road
SR Arcade, Eranjipalam P.O.
Kozhikode - 673006

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Eranjipalam P.O.
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 21.09.2021 and this Industrial Tribunal-cum-Labour Court on 29.12.2021 passed the following:

O R D E R

Present appeal is filed against order no.KR/KK/28196/ENF-1(5)/2014/7243 dt.27.10.2014 assessing dues U/s 7A of EPF & MP Act, 1952

(hereinafter referred to as 'the Act') for the period from 03/2011 to 03/2014. The total dues assessed is Rs.13,83,155/-.

2. The appellant is the proprietor of the appellant establishment. The appellant is doing agency business. The appellant used to purchase sarees from big companies and used to distribute the same to retail dealers. The appellant is engaging a few employees in connection with business activities. As per the registration certificate issued by the labour authorities under Kerala Shops & Commercial Establishments Act, the maximum number of employees permitted to be engaged in the appellant establishment is 10. The appellant started the business activity in the year 2001. The appellant establishment was covered under the provisions of the Act on the assumption that the appellant establishment engaged 31 employees. At no point of time the appellant engaged 31 employees. The respondent initiated an enquiry U/s 7A of the Act. He relied on the report of the squad of Enforcement Officers who visited the appellant establishment on 19.02.2014. The respondent authority has specifically stated in the impugned order that the number of employees are arrived at on the basis of the head count. It is not clear as to how the respondent authority arrived at the wages of employees from 03/2011. The statement in the impugned order that the appellant failed to utilise the opportunity afforded to him in the proceedings dt.17.09.2014 is not

correct. The 1st siting of the enquiry was scheduled on 14.08.2014 and the appellant attended the hearing and requested for time for production of documents. The respondent authority adjourned the hearing to 17.09.2014. The appellant could not attended the hearing on 17.09.2014 due to the demise of a close relative. However a letter dt.16.09.2014 seeking adjournment was delivered to the office of the respondent on 17.09.2014. The appellant was under the bonafide belief that the enquiry proceedings will be adjourned. However the appellant received the impugned order on 29.10.2014 deciding the matter ex-parte on the basis of the report of the Enforcement Officers. The request for adjournment was received by the Public Relations Officer of the respondent office under acknowledgement in the delivery book affixed with seal. The appellant received a letter dt.20.03.2014 from the Enforcement Officer of the respondent directing the appellant to produce certain records for verification. The appellant produced the records called for before the Enforcement Officer on 26.03.2014. The muster roll and wage register clearly shows that the appellant establishment was engaging only 8 employees at the relevant point of time. As already pointed out, the registration under Shops & Commercial Establishments Act clearly shows that the employment strength cannot be more than 10. It is not clear how the squad of Enforcement Officers arrived at the conclusion on the basis of head count that the appellant

establishment engaged 31 employees w.e.f. 01.03.2011 when the head count itself was conducted on 19.02.2014.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.03.2011. As such the appellant is liable to remit contribution from 01.03.2011. Since the appellant failed to remit contribution a notice was issued directing the appellant to produce records for the period from 03/2011 to 03/2014 on 14.08.2014. The proprietor of the appellant establishment attended the enquiry and sought adjournment for production of records. Hence the enquiry was adjourned to 17.09.2014. Nobody attended the enquiry on 17.09.2014 nor any representation is received from the appellant on the date of enquiry. Hence the enquiry was concluded on the basis of the report of the squad of Enforcement Officers and also on the basis of the copies of the records produced by the squad. The appellant establishment was covered under the provisions of the Act as the appellant employed more than 20 employees as on 03/2011. The appellant ought to have started compliance from the date it satisfied the statutory requirements without waiting for any notification extending the provisions of the Scheme to an establishment. It is an absolute and unqualified liability not depending on the vigilance of the department or on the will of the employer to make the workmen members of

the Scheme. The respondent authority complied with the requirements of Sec 7A and also principles of natural justice before issuing the impugned order. The appellant was provided enough opportunity before the impugned order is issued. The appellant is running a well established business employing more than 20 persons. The appellant has deliberately evaded the enquiry conducted U/s 7A of the Act.

4. The appellant establishment is covered under the provisions of the Act w.e.f. 03/2011. The appellant failed to comply under the provisions of the Act and Scheme. Therefore an enquiry U/s 7A was initiated by the respondent authority. The enquiry was scheduled on 14.08.2014 directing the appellant to produce the necessary records before the respondent authority. The appellant attended the hearing and requested for time for producing the records. The enquiry was adjourned to 17.09.2014. According to the learned Counsel for the respondent none attended the enquiry on 17.09.2014 and the respondent authority issued the impugned order on the basis of the report of the squad of Enforcement Officers and also the copies of records produced before him.

5. In this appeal the learned Counsel for the appellant has disputed the coverage of the appellant establishment on the ground that the appellant was engaging less than 10 employees at the relevant point of time. The learned

Counsel for the respondent pointed out that the respondent authority received a complaint from the employees of the appellant establishment and deputed a squad of Enforcement Officers to inspect the appellant establishment and verify the complaint. The squad of Enforcement Officers visited the appellant establishment on 19.02.2014 and reported that the appellant establishment is engaging 31 employees as on that date, prepared a mahazar on the basis of the head count and submitted the report to the respondent authority. They also produced copies of certain documents maintained by the appellant establishment, details of which are not specified in the impugned order or the counter filed by the respondent authority. The learned Counsel for the appellant also pointed out that the squad of Enforcement Officers who investigated the appellant establishment on 19.02.2014 did not verify the attendance register and wage register of the appellant establishment. According to him, it is not clear as to how the squad of Enforcement Officers arrived at the wages from 01.03.2011. The learned Counsel for the appellant also disputed the claim of the respondent that the squad of Enforcement Officers prepared list of 31 employees in the premises of the appellant establishment on 19.02.2014 and got their signatures in the mahazar.

6. According to the learned Counsel for the respondent, the dispute regarding applicability was never raised before the respondent authority and therefore the same cannot be raised in this appeal. According to the learned Counsel for the appellant he had no opportunity to raise any dispute before the respondent authority as the matter was decided on the 2nd day of the proceedings without hearing the appellant or verifying the records maintained by the appellant on the basis of the report of the squad of inspectors. As per Sec 7A of the Act,

> "Determination of moneys due from employers,
>
> (1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order
>
> a. In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute, and
> b. determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be,
>
> and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary "

From the above provisions, it is very clear that when there is dispute regarding coverage, the authority designated under 7A of the Act shall decide the applicability before assessing the dues. In this case it is seen that the respondent authority concluded the enquiry on the second day of proceedings when the appellant sought adjournment in writing due to his personal inconvenience. The learned Counsel for the respondent is correct in that way, that the appellant failed to raise the issue of applicability before the respondent authority. However from the circumstances of this case, it is seen that the appellant establishment was denied proper opportunity before the impugned order is issued. Further the impugned order is issued on the basis of the report of the squad of Enforcement Officers. The learned Counsel for the appellant raised the doubt regarding the quantification of dues since the squad failed to verify any records during their inspection on 19.02.2014 and therefore the assessment of dues from 01.03.2011 without any records also raises a serious dispute regarding the quantification of dues.

7. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to uphold the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to decide the applicability and re-assess the dues, if required, after issuing notice to the appellant, within a period of 6 months. If the appellant fails to appear or produce the records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant under 7(O) of the Act as per the direction of this Tribunal shall be adjusted or refunded after conclusion of the proceedings.

Sd/-

(V. Vijaya Kumar)
Presiding Officer