



सत्यमेव जयते

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

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

(Friday the 1st day of April, 2022)

APPEAL No.790/2019

Appellant : M/s.Plants Lipids (P) Ltd
(Plant Lipids Condiments – EOU Division)
Kolenchery
Kochi - 682311

By Adv.Paul Jacob

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 06.10.2021 and this Industrial Tribunal-cum-Labour Court on 01.04.2022 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/24246(7A)/ECourt Diary No.446/2019/Coc Ref KRKCH22800/ENF-V(2)/2019 dt.05.11.2019 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on

evaded wages for the period from 03/2018 to 02/2019. The total dues assessed is Rs.6,78,350/-.

2. The appellant is an establishment covered under the provisions of the Act. Contributions in respect of eligible employees are being paid regularly as per Para 29(3) of EPF Scheme. As per Para 29(3), contribution shall be calculated on the basic wages, DA (including the cash value of any food concession). As per Sec 6 of EPF & MP Act, contribution is required on basic wages, DA and retaining allowance. As per Sec 2(b), basic wages does not include any allowances, bonus, commission and any other similar allowances. An Enforcement Officer of the respondent inspected the appellant establishment on 13.03.2009 and thereafter issued an inspection report on 26.08.2019. The true copy of the inspection report is produced and marked as **Annexure A1**. The Enforcement Officer as per Annexure A1 directed the appellant to remit an amount of Rs.4,60,848/- towards contribution on various amounts paid to the employees for the period from 03/2018 to 02/2019. The appellant sent a reply informing that the calculation is not correct and is not according to law. The respondent thereafter issued a summons dt.30.08.2019 directing the appellant to appear in person or through an authorised representative. A true copy of the summons is produced and marked as **Annexure A2**. The appellant sent a reply dt.04.09.2019 disputing the claim. A

copy of the reply dt.04.09.2019 is produced and marked as **Annexure A3**. A representative of the appellant attended the hearing along with all the documents on 26.09.2019. The respondent thereafter issued the impugned order dt.05.11.2019 which is produced and marked as **Annexure A4**. The Enforcement Officer in his Annexure A1 report found that the appellant is liable to remit Rs.4,60,848/- relying on the same Muster Roll and salary report. The respondent found that the appellant is liable to remit an amount of Rs.6,78,350/-. No reason is provided in the impugned order for deviating from the assessment given by the Enforcement Officer in the inspection report. The impugned order is issued in violation of the principles of natural justice as the appellant was not provided adequate opportunity. The administrative charges in account no.2 has been calculated at the rate of 0.65% for the whole period from 03/2018 to 02/2019 whereas the administrative charges are reduced to 0.5% w.e.f. 01.06.2018.

3. The respondent filed counter denying the above allegations. The appellant is covered under the provisions of the Act w.e.f. 01.02.2008. The Enforcement Officer vide his report dt.13.03.2019 reported that the appellant failed to remit contribution on actual wages paid by the appellant to its employees for the period from 03/2018 to 02/2019. According to the report, the wages are split into basic, DA, house rent allowance, travelling allowance,

special allowance, overtime allowance, education allowance, hostel fee and UNI allowance. Contribution was paid only on basic plus DA which comes to around 50% of the gross salary. The inspection report was sent to the appellant directing them to remit an amount of Rs.4,60,848/-. The respondent authority during the 7A noticed that there was totalling mistake in the inspection report and the same was corrected to Rs.6,78,350/- while issuing the impugned order. The respondent authority issued summons dt.30.08.2019 fixing an enquiry on 26.09.2019. The appellant was also directed to produce the necessary records. A representative of the appellant attended the hearing and submitted copies of Muster Roll and salary report. The appellant also filed a written statement which was taken on record. According to the Hon'ble Supreme Court the appellant establishment is liable to remit contribution on all allowances universally, necessarily and ordinarily paid to its employees. The finding of the respondent in the impugned order are in conformity with the statutory provisions and binding decisions of the Hon'ble Supreme Court of India and High Courts. The Hon'ble Supreme Court in **RPFC-II, West Bengal Vs Vivekananda Vidyamandir & Others**, Civil Appeal no.6221/2011 held that all other allowances other than those which are specifically excluded will come within the definition of basic wages.

4. An Enforcement Officer of the respondent organisation inspected the appellant establishment and submitted a report stating that the appellant establishment is splitting up its wages in such a way that the appellant is remitting contribution only on 50% of the gross salary paid by the appellant to its employees. The salary is split into basic, DA, house rent allowance, travelling allowance, special allowance, overtime allowance, educational allowance, hostel fee and UNI allowance. A copy of the report was also given to the appellant. The appellant filed his objection stating that the appellant establishment is liable to pay contribution only as per Para 29(3) of EPF Scheme and therefore the various allowances paid by the appellant to its employees will not attract provident fund deduction. The respondent therefore initiated an enquiry U/s 7A of the Act. In the 7A, the appellant reiterated its earlier position that the appellant is liable to remit contribution only on basic and DA and the allowances will not attract provident fund deduction. The respondent authority examined the books and salary slips of few employees to come to a conclusion that the appellant establishment is remitting contribution only on 50% of the gross salary paid to its employees and the allowances paid are a clear case of subterfuge to avoid provident fund contribution. He finally concluded that travelling allowance, UNI allowance, education allowance and special allowance are being ordinarily, universally and regularly paid by the

appellant establishment to its employees and therefore it will come within the definition of basic wages and therefore will attract provident fund deduction.

5. In this appeal, the appellant reiterated its earlier stand that the allowances being paid by the appellant to its employees will not attract provident fund deduction in view of Para 29(3) of EPF Scheme. The learned Counsel also pointed out that the respondent authority has not given any reason for enhancing the assessment of dues to Rs.6,78,350/- when the report of the Enforcement Officer quantified the dues on the basis of the same records as Rs.4,60,848/-. According to the learned Counsel for the respondent the variation in the assessment by the Enforcement Officer and the respondent authority took place in view of the totalling mistake in the report of the Enforcement Officer. Even otherwise Sec 7A enquiry being a quasi judicial proceedings, the respondent authority is not bound by the assessment given by the Enforcement Officer and he is at liberty to assess the dues on the basis of the information placed before him at the time of enquiry. It is only shows that the respondent authority has applied his mind to the facts and evidence placed before him at the time of enquiry. The relevant provisions of the Act to decide the issue whether the special allowances paid to the employees by the appellant will attract provident fund deduction are Sec 2(b) and Sec 6 of EPF & MP Act.

Section 2(b) : “basic wages” means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include

1. cash value of any food concession
2. any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus , commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment.
3. Any present made by the employer.

Section 6 : Contributions and matters which may be provided for in Schemes.

The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, Dearness Allowance, and retaining allowance if any, subject to the condition that the

employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishment which the Central Govt, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted.

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the scheme may provide for rounding of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation 1. For the purpose of this Section Dearness Allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

The confusion regarding the exclusion of certain allowances from the definition of basic wages and inclusion of some of those allowances in Sec 6 of the Act was considered by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd Vs UOI**, (1963) 3 SCR 978. After elaborately considering all the issues involved, the Hon'ble Supreme Court held that on a combined reading of Sec 2(b) and Sec 6 where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages. Where the payment is available to be

specially paid to those who avail the opportunity is not basic wages. The above dictum laid down by the Hon'ble Supreme Court was followed in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidya Mandir & Others**, AIR 2019 SC 1240 the Hon'ble Supreme Court reiterated the dictum laid down by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd** case (Supra). In this case the Hon'ble Supreme Court was considering various appeals challenging the orders whether special allowance, travelling allowance, canteen allowance, lunch incentive and special allowance will form part of basic wages. The Hon'ble Supreme Court dismissed the challenge holding that the " wage structure and components of salary have been examined on facts both by the authority and the appellate authority under the Act who have arrived at a factual conclusion that the allowances in question were essentially a part of basic wages camouflaged as part of an allowances so as to avoid deduction and contribution accordingly to the provident fund accounts of the employees. There is no occasion for us to interfere with the concurrent conclusion of facts. The appeal by the establishments are therefore merit no interference " .

6. In **Montage Enterprises Pvt Ltd Vs EPFO, Indoor**, 2011 LLR, 867 (MP.DB) the Division Bench of the Hon'ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In **RPFC**,

West Bengal Vs Vivekananda Vidya Mandir, 2005 LLR 399 (Calcutta .DB) the Division Bench of the Calcutta High Court held that the special allowance paid to the employees will form part of basic wages particularly because no dearness allowance is paid to its employees. This decision was later approved by the Hon'ble Supreme Court in **RPFC Vs Vivekananda Vidya Mandir** (Supra). In **Mangalore Ganesh Beedi Workers Vs APFC**, 2002 LIC 1578 (Karnat.HC) the Hon'ble High Court of Karnataka held that the special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In **Damodarvalley Corporation, Bokaro Vs UOI**, 2015 LIC 3524 (Jharkhand .HC) the Hon'ble High Court of Jharkhand held that special allowances paid to the employees will form part of basic wages. The Hon'ble High Court of Kerala also examined the above issue in a recent decision dt.15.10.2020, in the case of **Employees Provident Fund Organisation Vs M.S.Raven Beck Solutions (India) Ltd**, W.P.(C) no.17507/2016. The Hon'ble High Court after examining the decisions of the Hon'ble Supreme Court on the subject held that the special allowances will form integral part of basic wages and as such the amount paid by way of these allowances to the employees by the establishment are liable to be included in basic wages for the purpose of deduction of provident fund. The Hon'ble High Court held that

“ This makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance forms the integral part of basic wages and as such, the amount paid by way of these allowances to the employees by the respondent-establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent-establishment by classifying it as payable for uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of Provident Fund contribution by the respondent-establishment “.

Hence the law is now settled that all special allowances paid to the employees excluding those allowances specifically mentioned in Sec 2(b)(ii) of the Act will form part of basic wages, depending on facts and circumstances of each case. In a recent decision in **Gobin (India) Engineering Pvt Ltd Vs Presiding Officer, CGIT and another**, W.P.(C) no.8057/2022 the Hon'ble High Court of Kerala examined the categorisation of allowances and the test evolved by the Hon'ble Supreme Court in **RPFC, West Bengal Vs Vivekananda Vidyamandir & Other**, 2020 17 SCC 643. The Hon'ble High Court held that there is no doubt that basic wages would also include allowances except HRA but the respondent

authority will have to examine the nature of allowances and the duties of the employees including the timings. The Hon'ble High Court held that

“ But the fact of the matter is both the authorities framed an opinion that the said allowances would be applicable to all the allowances. That finding according to me required a detailed examination of the records by considering the nature and duties of the jobs including the timings etc. In other words the universal formula of adding all allowances would not be appropriated as to what were the norms of the work prescribed for the workmen during the relevant period ”.

7. In this particular case, it is seen that the wage structure of the appellant establishment is basic, DA, house rent allowance, travelling allowance, special allowance, overtime allowance, education allowance, hostel fee and UNI allowance. The appellant is remitting contribution only on 50% of the gross salary paid to its employees. The respondent authority in the impugned order has given specific examples as to how the appellant establishment is resorting to subterfuge by splitting the wages into various allowances. The respondent authority found that house rent allowance is specifically excluded U/s 2(b)(2) and therefore was not included in the assessment. He also excluded the hostel fee being paid to the employees at the rate of Rs.600/-. The respondent authority finally concluded that travelling allowance, UNI allowance, education

allowance and special allowance are being ordinarily, universally and regularly paid by the appellant establishment and therefore will come within the definition of basic wages and therefore will attract provident fund deduction. After referring to its earlier decisions the Hon'ble Supreme Court of India in **RPFC-II, West Bengal Vs Vivekananda Vidya Mandir & Others**, 2020 17 SCC 643 held that the allowances linked to any incentive for production resulting in greater output by an employee or were being paid especially to those who avail the opportunity will not come within the definition of basic wages. The Hon'ble High Court of Kerala in a recent decision in **Gobin India Engineering Pvt Ltd Vs Presiding Officer, CGIT and LC, Ernakulam**, W.P.(C) no. 8057/2022 held that to exclude an allowance it has to be shown that the workman concerned has become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. The appellant has no case that the allowances identified by the respondent authority to be part of basic wages is being paid for any extra work or for any extra output from the employees.

8. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer