



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

सत्यमेव जयते

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

(Wednesday the 7th day of April, 2021)

Appeal No.44/2018
(Old No. Appeal (KL)25/2016)

Appellant : M/s. Blossom Inner Private Limited,
(former M/s. Cotton Asia Textile Industries)
Blossom Park, Mudavoor P.O
Muvattupuzha
Ernakulam – 686 669.

By Adv. P. Ramakrishnan

Respondent : The Assistant P F Commissioner
EPFO, Sub Regional Office
Kaloor,
Kochi – 682017

By Adv. Sajeev Kumar K. Gopal

This appeal came up for hearing on 22/02/2021 and this Industrial Tribunal cum Labour Court issued the following order on 07/04/2021.

ORDER

Present appeal is filed from order No. KR / KCH / 15602/ENF-3 (2) 2016 /1633 DT. 20/8/2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') against non-enrolled employees for the period from

04/2010 to 04/2014. The total dues assessed is Rs. 7,89,026/-.

2. The appellant is a Company registered under the provision of Company's Act, 1956. It was originally a partnership firm in the name and style of Cotton Asia Textile Industries. The Company is engaged in the manufacture and trading of women and kids undergarments. The Enforcement Officer of the respondent during his inspection reported that the appellant failed to enroll some employees to provident fund from 04/2010 to 04/2014. Based on the report of the Enforcement Officer, an enquiry U/s 7A of the Act was initiated vide notice dt. 20/11/2014. A representative of the appellant appeared in the enquiry and sought and procured a copy of the inspection report. The appellant submitted the wage register as well as the Balance Sheet during the course of enquiry. The appellant also filed a detailed written statement which is produced and marked as Annexure A1. The appellant took a contention that some of the alleged non-enrolled employees are excluded employees and hence is not coverable under the provisions of the Act. It was also contented by the appellant that trainees engaged are also

excluded and therefore not enrolled to the fund. The respondent took a view that the data provided by the appellant during the course of the enquiry does not tally with the wage register submitted by the appellant and therefore rejected the contention of the appellant. The respondent therefore issued the impugned order assessing the dues in respect of the non-enrolled employees. The Annexure A & B statement attached to Annexure A1 submitted by the appellant before respondent would show that the contention regarding inclusion of excluded employees among the non-enrolled employees is correct. There was nothing on record to arrive at a conclusion that those employees will come within the definition of the employees under the provisions of the Act. The appellant also claimed that some of the employees who were drawing more than Rs.6500/- salary paid lesser wages on account of loss of attendance. The interpretation of the definition of employee by the respondent is not correct by virtue of the interpretation any employee drawing less than Rs.6500/- per month on account of even statutory deduction would be ousted from the definition. The appellant had engaged number of persons of trainees for short period. The

appellant being an establishment coming within the ambit of Industrial Standing Order Act. They are entitled to engage trainees as provided in the Model Standing Orders.

3. Respondent filed counter denying the above allegations. During the inspection by the Enforcement Officer it was noticed that there was last scale evasion of eligible employees to EPF Scheme as mandated under the Act. According to the report, the establishment denied 97 employees' benefits of provident fund, pension and insurance as provided under EPF & MP Act. Hence an enquiry U/s 7A of the Act was initiated fixing the enquiry on 20/01/2015. The appellant was directed to produce the relevant records and appear in person or through a representative. The representative of the appellant who appeared in the enquiry requested for a copy of the inspection report. A copy of the report was provided to him along with the list of non-enrolled employees. The appellant produced the wage register for the period from 04/2010 to 04/2014. The appellant argued that the list of non-enrolled employees included persons who joined in the middle of the month and whose actual salary was more than the statutory limit. He also argued that some

of the employees drawing more than Rs.6500/- is paid less salary because they avail loss of pay leave. The appellant filed the balance sheet and the sub ledger head of salaries and incentive paid to the employees. He also filed a written statement and produced the appointment letters for employees who were paid above Rs.6500/-. On verification of the records submitted by the appellant, it is seen that the appellant had mentioned a part of the salary as other allowances which they claimed to be food allowance which varied from person to person, in a given month. As per Para 2 (f) 2 and 26 (3) of EPF Scheme an employee whose pay at the time he is otherwise entitled to become a member of fund exceeds Rs.6500/- per month is considered as an excluded employee. Similarly if an excluded employee who was drawing more than Rs.6500/month salary gets reduced salary of less than Rs.6500/- per month and he will be become a member of the fund. The appellant contented that the establishment is coming under Standing Orders Act and is entitled to engaged trainees as per the Model Standing Orders. The appellant establishment is a trading and commercial establishment and is not an "industrial

establishment” within the meaning of definition U/s 2E of the Industrial Employment Standing Orders Act 1946 and therefore the Standing Orders Act is not applicable to the appellant establishment. The appellant establishment will be covered under the Standing Orders Act if it is an establishment defined in Sec 2(II) of the Payment of Wages Act 1936 or Sec 2 (m) of Factories Act 1948. In **Common Wealth Trust India Ltd., Vs Labour Commissioner**, OP No.24276/2001 the above position was confirmed by the Hon’ble Court of Kerala. The Hon’ble Court observed that when an establishment is not an “industrial establishment” as defined under the Standing Orders Act, the establishment and the employees of that establishment cannot be held to be covered under the Standing Orders Act. No exclusion is provided for trainees under the EPF Act. The assessment of dues as per the impugned order was done on the basis of the records produced by the appellant establishment limiting the wages to the statutory limit of Rs.6500/-. The impugned order was issued after following the principles of natural justice.

4. The Enforcement Officer of the respondent during the regular course of inspection of the appellant establishment

found that 97 employees engaged by the appellant during relevant period of time were not enrolled to provident fund. The respondent authority initiated an enquiry U/s 7A of the Act to assess the dues in respect of the non-enrolled employees. The appellant was given 14 opportunities starting from 21/01/2015 to 08/01/2016. The appellant produced the records called for and also produced a written statement along with the enclosures. As per Annexure A1 written statement filed by the appellant before the 7A authority the employees who were not enrolled to the fund are excluded employees as per the provisions of the Act. According to the appellant the wages/salary of some these employees were less than Rs. 6500/- because they were on loss of pay leave, during the relevant period of time or because they joined in the middle of the month and therefore salary is paid only for the rest of the month. The appellant also produced two Annexure A & B along with the reply to substantiate their claim. On a perusal of the Annexure A produced by the appellant, it is seen that none of the employees in the list are drawing more than Rs.6500/- as salary per month and therefore they are not excluded as per the provision of Para

2(f)2 of EPF Scheme. The appellant also produced a statement in Annexure B which shows the names of 28 employees whose actual pay was more than Rs.6500/- but were being paid less than Rs. 6500/- as they worked for lesser number of days in a month. According to the learned Counsel for the respondent, the wage register produced by the appellant before the 7A authority does not support the Annexure A & Annexure B statements and therefore are not reliable. The impugned order also supports the argument of the learned Counsel for the respondent wherein the respondent authority has furnished the names of 24 employees whose wages are claimed to be above Rs.6500/- but were paid wages less than Rs.6500/- continuously for a period of 4 months. Hence it is difficult to accept the position of the learned Counsel for the appellant that the wages of these employees were more than the statutory limit but they were paid lesser salary as they worked for lesser number of days and also because they joined in the middle of a particular month.

5. The learned Counsel for the appellant also came up with a plea that some of these employees were trainees under the Model Standing Orders . It is seen that the appellant never

raised such a dispute before the respondent authority U/s 7A of the Act and vide the written submission filed during the course of the enquiry which is produced and marked as Annexure A1 in this appeal. The learned Counsel for the respondent also took the view that the appellant establishment will not come within the definition of “ industrial establishment ” under Standing Orders Act and therefore the Model Standing Orders are not applicable to the appellant Establishment. At any cost this contention was not raised before the respondent authority and was not adjudicated before him. Therefore such a plea can only be taken as an after thought. The appellant completely failed to substantiate his claim that trainees were engaged under Standing Orders Act.

6. It is seen that the appellant was given more than adequate opportunity by the respondent authority during the course of the enquiry. Though the enquiry was initiated on the basis of the report of the Enforcement Officer that 97 employees were not enrolled to the fund, on the basis of the records produced by the appellant the respondent found that 215 employees who were otherwise eligible for membership

were not provided the Social Security Benefits under the Act and Schemes. Hence it is clear that the respondent relied on the documents produced by the appellant during the course of enquiry and not on the report of the Enforcement Officer.

7. Considering the facts, evidence 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