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

Date: 09-03-2026

Present: SUSHIL KUMAR-II,
PRESIDING OFFICER

Appeal No.134/2018

BETWEEN

M/s.Micro Objects Private Ltd,
Rep.by its CEO, Jery George K.,
41/1098 B, Pullepady Cross Road,
Ernakulam-682 018. : 1st Party/Appellant

AND

The Regional Provident Fund Commissioner
Employees Provident Fund Organization,
36/685A, Bhavishyanidhi Bhavan,
Kaloor, Kochi – 682017 : II Party/Respondent

Appearance:

For the Appellant : Mr. Anil Kumar, Advocate
For the Respondent : Mr. S.Prasanth, Advocate

****

The present appeal has been filed by the Appellant against the order of the Assistant PF Commissioner, Kochi No. KR/KC/19655/Enf.5(1)/2017-18/42 dated 28.03.2018 by which dues amounting to Rs.71,81,218/- was saddled against the Appellant u/s.7A of the EPF & Miscellaneous Provisions Act, 1952.

2. The appellant is an establishment engaged in developing computer systems software and allied activities. It is covered under the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952, when the establishments engaged in development of software was brought under coverage vide

notification No. SO 1190 (E) dated 27/7/2006. At that time, the appellant was engaging more than 70 employees and of which only 2 were qualified for enrollment under the EPF Scheme, as the remaining employees were drawing more than Rs. 6,500/- as basic pay. In order to extend the benefit of EPF Scheme to all employees, the appellant voluntarily brought all their employees under EPF Scheme from August 2007 onwards. The wage components of the employees of the appellant are Basic Salary, House rent allowance, Transportation allowance, Medical reimbursement, Food Allowance and Project and performance incentive. The wage pattern prevailing prior to 2006 is continuing even now with timely increase in its components. When the EPF limit increased to Rs. 15000 from Rs. 6500 w.e.f 01.09.2014 vide notification dated 22.08.2014, the appellant started remitting EPF Contribution on actual wages drawn by their employees, excluding the wages components which will not qualify as wages for the purpose of computation of contribution. Based on an inspection report suggesting splitting up of wages for the purpose of evasion of EPF Scheme, the respondent by order dated 28/3/2018 determined a sum of Rs. 71,81,218/- as contribution payable on evaded wages. The order impugned is passed without any application of mind and without adverting to legal position on the subject. The Respondent failed to consider the documents produced by the Appellant. The allowances namely HRA, T.A . Medical reimbursement, food allowance and project and performance incentive allowance will not come under basic wages under the Act.

Further, all the employees were drawing Rs.15,000/- as basic wages was on imaginary basis and hence, the impugned order is liable to be set aside.

3. In the reply statement, it is submitted by the Respondent that the E.O who visited the Appellant establishment found that there was evasion of wages by the Appellant by remitting PF contribution only for basic wages and other emoluments such as transport allowance, food allowance and project incentive were not taken into account for calculation of PF dues. The Appellant with a vested interest spilt up the basic wages into different components and thereby evading statutory liability of not remitting PF contribution on actual wages. In support of their claim, they relied on judgement of the Hon'ble Supreme Court in the case of Bridge and Roof Company Ltd. Vs. UOI & Ors (1963) AIR 1474. Further, allowances are not an excluded item as defined u/s.2(b) of the Act and it is either part of basic pay and DA. Therefore, the impugned order is not required any interference.

4. The learned counsel for the Appellant submitted that the Hon'ble Supreme Court of India in the case of RPFC Vs Vivekananda Vidya Mandir vide order dated 28.02.2019 held that allowances which are paid across the board to all employees in a particular category should be treated as "basic wages" and contribution is payable on such allowances. Only payments paid to employees which were either variable or were linked to any incentive for production resulting in greater output or were being paid

especially to those employees who avail the opportunity has been excluded from the definition of "basic wages". Further, the wage pattern was not newly introduced by the Appellant. Even when the employees were drawing wages above the ceiling the Appellant brought them under coverage as welfare measure. Without accepting the explanation given by the Appellant and without adverting to the documents produced by the Appellant, EO submitted a report that there was evasion of wages while computing contribution. When the EPF limit was increased to Rs.15000/- from Rs.6500/- w.e.f. 01/09/2014, the Appellant has remitted PF contribution on actual basis drawn by the employees excluding the wage components which will not qualify as wages for the purpose of computation of PF. Therefore, the learned counsel for the Appellant prays that the impugned order passed by the Respondent may be quashed for the aforesaid reasons

5. On the other hand, the learned counsel for the Respondent contended that Appellant is liable to contribute on all allowances except HRA. From the records of the Appellant, it is evident that employees are in receipt of other allowances and special allowances which are much more than 50% of Basic wages. The Appellant has adopted splitting of wages into allowances only with a mala fide intention to escape from payment of PF dues. He also submitted that the Hon'ble High Court of Madras has passed an order to assess the PF dues but not to recover the dues till the

final order is passed by the Hon'ble Supreme Court in SLP No.C-8781-8782/2012. The learned counsel for the Respondent contended that in the judgement of Gujarat Cypromet Ltd. Vs. APFC (2004) 3 CLR 485, it was held that medical allowance, transport allowance and other similar allowances are part of basic wages and hence contributions are payable on such allowances.

6. Heard learned counsel appeared on either side and perused material available on record and the case law relied on by either side. The main contention of the Appellant is the wage pattern was not newly introduced by the Appellant and when the employees were drawing wages above the ceiling the Appellant brought them under coverage as welfare measure. When the EPF limit was increased to Rs.15000/- from Rs.6500/- w.e.f. 01/09/2014, the Appellant has remitted PF contribution on actual basis drawn by the employees excluding the wage components which will not qualify as wages for the purpose of computation of PF. But, without accepting the explanation given by the Appellant and without adverting to the documents produced by the Appellant, EO submitted a report that there was evasion of wages while computing contribution.

7. The learned counsel for the Respondent relied on a case law decided by the Hon'ble Supreme Court in Civil Appeal No.6221 of 2011 (RPFC Vs.Vivekananda Vidyamandir & Ors); Civil Appeal No.3965-3966 of 2013 (Surya Roshini Ltd. Vs. EPF & Others), wherein the Hon'ble Court upheld the inclusion of certain

allowances as basic wages for the purpose of determining PF amount payable, wherein the Hon'ble Court has approved the wages which constitutes as basic wages:-

i) where a payment is universally, necessarily and ordinarily paid to all employees across the board, it constitutes basic wages;

ii) where a payment is available only to those who avail of the opportunity, it does not constitute basic wages; and

iii) where a payment is linked to a special incentive or extra work, it does not constitute basic wages.

8. During the enquiry conducted by the Respondent this fact came to notice that salary pay is split into several heads like other allowances as subterfuge to avoid PF contribution. The Respondent mentioned that most of the employees whose basic wages and other allowances was more or less equal.

9. The Appellant nowhere stated that some amounts were payable to employees for their performance of doing extra work. During the course of enquiry or hearing of appeal, the Appellant never raised a question that allowances being paid to its employees either in variable or were linked to any incentives for more production and further, the Appellant failed to establish that allowances in question were not paid to all employees in a particular category.

10. As per discussion above, I find there is no fault neither in the findings of the impugned order nor the enquiry conducted by the Respondent to ascertain the employees and then directed the

Appellant to provide contribution on the amounts which are included in the basic pay. As the Hon'ble Supreme Court held in the case of Bridge and Roof Co.(India) Ltd. Vs. Union of India (1963) 3 SCR 978, whatever is payable by all concerns or earned by all permanent employees had to be included in basic wage for the purpose of deduction u/s. 6 of the Act.

ORDER

For the aforesaid reasons, the appeal filed by the Appellant is liable for dismissal. The appeal is dismissed accordingly.

Place : ERNAKULAM
Date : 09.03.2026

(SUSHIL KUMAR-II)
PRESIDING OFFICER