



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

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

(Friday the 13th day of May, 2022)

APPEAL No.181/2018

Appellant

M/s. Grove Ltd
(Vithoga Chemicals Pvt. Ltd)
Grove Centre E44
Development Plot
Kalamassery- 683 109.

By Adv. Menon & Pai

Respondent

The Assistant PF Commissioner
EPFO, Regional Office,
Kaloor
Kochi ~682 017.

This case coming up for final hearing on
20/04/2022 and this Tribunal-cum-Labour Court on
13/05/2022 passed the following:

ORDER

Present appeal is filed from order No. KR / KCH /
13924 / Enf-5(4) / 2017-2018 / 1642 dt. 15/05/2018

assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) on Sec 17B compensation paid by the appellant to its employees during the pendency of an Industrial Dispute for the period from 08/2008 to 06/2014. The total dues assessed is Rs.3,91,708/-.

2. The appellant is a private limited company registered under companies Act 1956. The appellant is engaged in the manufacture of rubber processing chemicals. The factory commenced production on 1/8/1994. In view of the competition in the open market and consequent financial constraints the appellant company was closed with effect from 29/04/2004. Thirty one employees were offered closure compensation and other terminal benefits. Twenty three employees accepted the compensation in full and final settlement. Eight of the remaining workers represented by a union raised an industrial dispute alleging delay of an employer. The Labour Court registered an industrial dispute as ID No.09/2005. The Labour Court, Ernakulam passed an award answering

against the appellant holding that the closure that the appellant establishment is not justifiable and the workmen are entitled to get reinstatement and continuity of employment in M/s Merchem Ltd and Merchem India Pvt. Ltd, the factories owned by the same management. The appellant challenged the award before the High Court of Kerala in Writ Petition No. 24597/2008. The workers filed a claim U/s 17B of industrial dispute Act. The Hon'ble High Court allowed the petition. The appellant filed Writ Appeal against the order allowing Sec 17B payment. Writ Appeal was dismissed by the Division Bench. The Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed. Consequently Sec 17B wages was paid to workmen for the period 08/2008 to 06/2014. The respondent initiated an enquiry U/s 7A to assess the dues on the compensation paid U/s 17B of the Industrial Dispute Act. A true copy of the summons is produced and marked as Annexure A1. A representative of the appellant attended the hearing and filed a written statement dt. 21/02/2018. A

copy of the same is produced and marked as Annexure A1. The specific stand of the appellant was that Sec 17B payment given to the workers do not constitute basic wages U/s 2(b) of the Act and therefore no contribution was payable. Without considering the contentions of the appellant the respondent issued the impugned order, a copy of which is produced and marked as Annexure A3. As per the definition of basic wages in Sec 2(b) of the Act the payments made U/s 17B of ID Act cannot be taken as basic wages. The expression emoluments which are earned by an employee while on duty appearing in the definition of Sec 2(b) represents the amounts actually earned by an employee during the period of his employment when he is actually on duty. Sec 17B payment cannot regard as representing emoluments earned while on duty and therefore, will not come within the definition of basic wages.

3. Respondent filed counter denying the above allegations. A complaint was received from four ex-

employees of the appellant establishment. They stated that they were terminated from the service of the above establishment during March 2004 on the closure of the establishment. In the Industrial Dispute No. 09/2005 the Hon'ble Labour Court vide its award dt.10/03/2008 held that the denial of employment of seven workers by the management by closing down the establishment is not justifiable. Therefore the Labour Court directed that the workers may be reinstated with continuity of service in M/s. Merchem Ltd and Merchem India Pvt. Ltd. The appellant filed Writ Petition No. 24579/2008 before the Hon'ble High Court and the Hon'ble High Court directed the appellant to pay Sec 17B arrears within a period of one month and pay 17B wages in the first week of every month. The Writ Appeal and the SLP were dismissed by the Division Bench of the Kerala High Court and Hon'ble Supreme Court. The appellant paid Sec 17B wages for the period from 06/08/2008 to 30/09/2012 in lumpsum and for subsequent months from 10/2012 to 06/2014. In the

meanwhile the ex-employees filed Claim Petition 30/2016 before the Hon'ble Labour Court. As the appellant paid 17B wages only upto June 2014 and the Hon'ble Labour Court vide order dt. 28/06/2017 directed the appellant to pay the arrears of wages for the subsequent periods from June 2014. In the meanwhile the Hon'ble High Court of Kerala in W.P.(C) No. 24579/2008 vide judgment dt. 26/06/2018 directed that the Labour Court is required to examine whether the workers are entitled for closure compensation or entitled to be absorbed in Merchem Ltd. The Hon'ble High Court therefore set aside the award in ID No. 09/2005 and directed the Labour Court to decide the matter afresh. On the basis of the complaint received from the ex-employees an Enforcement Officer was deputed to investigate whether the employees are entitled for provident fund contribution. On verification, the Enforcement Officer noticed that the employees had earned wages U/s 17B of the Industrial Dispute Act for the period from 06/08/2008 to 30/06/2014. On the basis of the report of the

Enforcement Officer, respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing he submitted the fact regarding the closure of the establishment and subsequent legal proceedings. He further pleaded that the compensation paid U/s 17B of the ID Act will not come within the definition of basic wages. It is clear that all the emoluments which are earned by an employee other than those specifically excluded components would form part of the basic wages for the purpose of contribution under the Act.

4. According to the learned Counsel for the appellant, the Hon'ble High Court of Kerala in W.P.(C) No. 24579/2008 remanded the industrial dispute to the Labour Court for re-adjudication of the award passed in ID No. 09/2005. The Labour Court Ernakulam vide its award dt.27/02/2019 reversed its earlier order. The Hon'ble Labour Court held that “ The payment of benefit U/s 17B of the ID Act was in compliance with the orders of the Hon'ble High Court pursuant to the challenge of the

earlier award passed by this court. Such payments affected to these workmen will not render any benefits claimed by them for entry in the services of additional second and third management. The closure of Vithoga Chemical Pvt Ltd was legal and justifiable. Therefore, the workmen are entitled to receive closure compensation from the first management. These points are against the workman”. The learned Counsel for the appellant argued that in the above circumstances the Sec 17B compensation paid as per the direction of the Hon'ble High Court of Kerala cannot be treated as basic wages under EPF and MP Act.

Sec 17B of the Industrial Dispute Act read as follows :

“ 17B payment ~ Payment of full wages to workman pending proceedings in higher Court wherein any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the

Supreme Court, the employer shall be liable to pay such workman during the period of pendency of such proceedings in the High Court or Supreme Court , full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not being employee in any establishment during such period and an affidavit by such workman had been filed to that effect in such court”.

5. According to the learned Counsel for the respondent as per Sec 17B the payment to be made to the employees/ex employees are full wages inclusive of any maintenance allowance admissible under any law. Hence the compensation or wages paid as per Sec 17B of the ID Act will form part of basic wages as it will come within the emoluments paid to the employee. According to the learned Counsel for the appellant, the Sec 17B wages paid is only a

subsistent allowance which will not come within the definition of basic wages. In **Shree Changdeo Sugar Mills Vs Union of India**, 2001 KHC 606 the Hon'ble Supreme Court considered whether the retrenchment compensation paid on the basis of a settlement will attract provident fund deduction and held that it is not at all necessary that the workman should actually be on duty in order to attract the provisions of EPF & MP Act. Following the above decision of the Hon'ble Supreme Court, the Hon'ble High Court of Kerala in **Manager , Wallardie Estate Vs RPFC and another**, W.P.(c) No. 40468/2018 held that the backwages paid as per award of a Labour Court will attract provident fund deduction. In this case the issue whether the Sec 17B wages paid as per direction of the Hon'ble High Court will attract provident fund deduction. It is further relevant that the earlier award of the Hon'ble Labour Court on the basis of which the Sec 17B wages were ordered by the Hon'ble High Court of Kerala was reversed by the Labour Court on a remand by the Hon'ble High Court of Kerala. Though the

award on the basis of which the Hon'ble High Court ordered Sec 17B compensation is reversed, the compensation already paid cannot be recovered from these employees. In such a circumstance, it is not fair to direct the payment of provident fund contribution on such compensation paid by the appellant to its employees.

6. Considering the facts, circumstances pleadings and evidence in this matter, it is not possible to sustain the impugned order .

Hence the appeal is allowed and the impugned order is set aside.

Sd/-

(V. Vijaya Kumar)
Presiding Officer