



सत्यमेव जयते

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

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

(Thursday the 30th day of September, 2021)

APPEAL No.318/2019

(Old No. ATA-187(7)2015)

Appellant : M/s. Accentia Technologies Ltd,
231-235, Nila Technopark,
Thiruvananthapuram – 695 581

By Adv. M.Gireesh Kumar

Respondent : The Assistant PF Commissioner
EPFO, Pattom.P.O
Thiruvananthapuram– 695 004.

By Adv. Nitha N.S

This case coming up for final hearing on 26.04.2021 and this Tribunal-cum-Labour Court on 30.09.2021 passed the following:

ORDER

Present appeal is filed from order No KR/16436/Enf-1(1)2014/4892/ dt. 25/09/2014 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) for the period from from 02/2012 to 12/2013. The total dues assessed is Rs. 58, 28,016/-.

2. The appellant is engaged in IT enabled services. The appellant is covered under the provisions of the Act. The respondent authority summoned the appellant on the allegation that the appellant establishment failed to remit contribution for the period from 02/2012 to 12/2013. The enquiry was fixed on 25/03/2014 directing the appellant to produce necessary records. The appellant was laid up due to viral fever and therefore he could not attend the enquiry. Since the appellant failed to attend the enquiry the respondent authority issued an ex-parte order which is produced and marked as Annexure A1. Annexure A1 is received in the office of the appellant on 30/09/2014. The appellant preferred a review application U/s 7B of the Act. A copy of the review application is produced and marked as Annexure A2. The appellant was given an opportunity for hearing the review petition 24/12/2014. A representative of the appellant attended the same. Representative of the appellant requested for a copy of the inspection report and details of calculation statement in respect of alleged dues in order to file the objection. The same was not served and the respondent disposed off the review application vide order dt. 24/12/2014, a copy which is produced and marked as Annexure A3. The impugned A1 order is silent with regard to the alleged inspection conducted by the Enforcement

Officer. According to the Enforcement Officer, the appellant failed to produce any documents hence dues were calculated on the basis of seized documents and mahazer report prepared at the time of inspection. The impugned order is silent with regard to the description of documents and the copy of report of the Enforcement Officer was not provided to the appellant. The appellant failed to provide copies of the documents seized from the appellant establishment. The wages shown in the impugned order is not correct. The respondent ought to have seen that majority of the employees working in IT enabled services will be excluded employees and the total sum shown as wages includes those persons also. The respondent failed to examine the alleged complainants in order to collect the best evidence of pay slip in respect of the monthly wages.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered w.e.f 01/07/1999. The appellant defaulted in payment of contributions from the wage month 02/2012 to 12/2013. Complaints were received from the employees of the appellant that the appellant establishment is not remitting the contribution in respect of its employees. A squad of Enforcement Officers was deputed for investigation. The squad reported that the appellant establishment is in default

for the period from 02/2012 to 12/2013., As the appellant failed to produce any records the dues were calculated on the basis of the seized documents. Further a mahazer was also prepared taking physical count of employees at the time of inspection. The respondent authority initiated an enquiry U/s 7A of the Act. A notice of the enquiry was served on the appellant through the Enforcement Officer on 12/05/2014 fixing the enquiry on 23/05/2014. The appellant was directed to produce all the relevant documents in the enquiry. None appeared in the enquiry on 23/05/2014 and therefore the enquiry was adjourned to 10/06/2014 and later to 12/08/2014. The appellant failed to appear in the enquiry even though sufficient opportunity was offered to him. Hence the respondent authority finalized the enquiry on the basis of the report the Enforcement Officer. The appellant filed a review application U/s 7B on 04/11/2014. A notice for personal hearing was issued on 16/12/2014. A representative appeared in the enquiry but did not produce any records for considering the application for review U/s 7B of the Act. It was clarified to the representative of the appellant that the report of the Enforcement Officer was served on the appellant and it was duly acknowledged by him. The appellant was also offered sufficient opportunity in the Sec

7A proceedings. It was also clarified to the appellant that unless new and important documents are produced a review application U/s 7B cannot be considered. Accordingly the review application was rejected. The inspection of the appellant establishment was conducted by the Squad of Enforcement Officers on 13/02/2013 and a mahazer was prepared on that date. Copy of the mahazer is produced and marked as Exbt R1. The mahazer was duly signed by the Senior Project Manager and office staff authorized by the establishment. The dues were determined on the basis of the attendance register of the appellant seized by the squad and copies of the employees' salary details in the appellant's office computer. A copy of the inspection part-II was served on the appellant and acknowledgement obtained. A copy of the acknowledgement is marked as Exbt. R2. The appellant had no claim during the course of enquiry to examine the Enforcement Officer as the appellant remained absent. The respondent also failed to file any objection to the report of the Enforcement Officer which was acknowledged by him. For the non co-operation of the appellant by not producing the records for inspection the appellant is liable to be prosecuted U/s 14B of the Act read with Para 76(d) of this Scheme.

4. The appeal was admitted vide order dt. 30/01/2020 subject of pre-deposit of 40% of assessed dues with the respondent within a period of 1 month from the date of the order. There after the appeal was posted on various dates. The learned Counsel appearing for the appellant failed to confirm the pre-deposit U/s 7(O) of the Act. Though the appellant was required to deposit 75% of the assessed dues as pre-deposit U/s 7(O), the same was reduced to 40% on the ground of financial difficulty pleaded by the learned Counsel for the appellant. On 18/02/2001 when the matter was taken up, the learned Counsel for the appellant was directed to file a memo regarding the remittance of the pre-deposit amount. The Counsel for the appellant sought some time and therefore the matter was posted 26/05/2021. On that day also the learned Counsel for the appellant could not confirm the pre-deposit and therefore the matter was heard on merit. However the learned Counsel for the respondent during the course of hearing confirmed that the pre-deposit ordered by this Tribunal U/s 7(O) of the Act was not deposited by the appellant. It is therefore clear that the appeal is to be dismissed as not maintainable because of the failure on the part of the appellant to deposit the pre-deposit U/s 7(O) of the Act.

5. As per Sec 7(O) of the Act, “No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined by an Officer referred to in Sec 7A . Provided that the Tribunal may, for reasons to be recorded, waive or reduce the amount to be deposited under this section.”

In M/s. Muthoot Pappachan Consultancy and Management Services Vs. Employees Provident Fund Organization and Others, 2009 (1) KHC 362 the Division Bench of the Hon’ble High Court of Kerala held that the deposit of 75% U/s 7(O) of EPF Act is a pre-condition for maintaining the appeal and not a condition for staying the operation of the order under appeal.

6. Since the matter was heard on merit it is felt appropriate to dispose the appeal on merit .

7. The respondent received complaints from the employees that the appellant is not remitting contribution in respect of its employees for the period from 02/2012 to 12/2013. It is to be noted that the complaint is regarding non-payment of regular dues of the appellant establishment. The respondent therefore deputed a squad to investigate into the complaint. The appellant failed to produce any documents for inspection. The squad of Officers therefore

seized the available records, took the salary details maintained in their computer system and prepared a mahazer which is countersigned by the responsible person present in the appellant establishment. Though the appellant claimed that the report of the Enforcement Officer was not served on the appellant, the respondent produced the acknowledgement card for having served it on the appellant. The appellant was summoned U/s 7A and the notice was issued fixing the enquiry on 23/05/2014. It was adjourned to 16/06/2014 and 12/08/2014. In spite of the fact that the appellant received and acknowledged summons he neither attended the enquiry nor sent a representative to seek adjournment. In this appeal it is pleaded that the appellant was not well during the relevant point of time. It is very difficult to accept the claim of the appellant in view of the fact that his behaviour from default in remitting contribution to non co-operation with the squad of inspectors by not producing the relevant records will clearly indicate that the appellant was trying to evade the process of law. The respondent authority therefore issued an order on the basis of the attendance registers and wage details seized from the establishment and also on the basis of the mahazer prepared by the squad. The appellant filed a review application which

was also rejected since the appellant failed to produce any new records or point out that there was any error on the face of the record. In this appeal the appellant has come up with a case that the impugned order assessing dues is issued without proper records and many of the employees are excluded in view of the salary paid to them. It is a clear case where the appellant failed to produce the required documents before the respondent authority and the respondent authority was forced to issue an order on the basis of the available information. It is settled position of the law that when opportunities are given and the party concerned failed to produce the records or attend the enquiry, he cannot come up in appeal and plead that the order issued by the respondent authority is not based on records. The appellant being the custodian of records, it is his responsibility to produce the documents before the authority to substantiate his contentions. Having failed to do so the appellant has no case to challenge the impugned order in this appeal.

8. It is seen that the assessment is for regular dues and that to for a period from 02/12 to 12/2013. It is not correct and fair to delay the process of recovery to extent the social security benefits to the employees of the appellant.

However it is felt that the appellant can be given one final chance to produce the records before the respondent authority to assess the dues.

9. Considering the facts pleadings and evidence I am inclined to hold that the appellant can be given one final chance to produce records before the respondent authority for proper assessment of dues.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to reassess the dues within a period of 6 months after issuing notice to the appellant .If the appellant fails to appear or produce the records called for the respondent may proceed according to law.

Sd/-

(V.VijayaKumar)
Presiding Officer