



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

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

(Monday the 8<sup>th</sup> day of March, 2021)

**Appeal No.453/2019**  
(Old no.68(7)2016)

Appellant : M/s.Kerala Ceramics Ltd  
Kundara  
Kollam – 691501

By Adv. M. Gireesh Kumar

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kollam – 691001

By Adv.Pirappancode V. S. Sudheer &  
Megha A.

This case coming up for hearing on 08.03.2021 and the same day this  
Tribunal-cum-Labour Court passed the following:

**ORDER**

Present appeal is filed from four separate communications dt.25.07.2014,  
26.06.2014, 24.03.2015, 06.04.2015 issued by the Recovery Officer of the EPFO  
communicating the outstanding dues, damages and interest to the appellant.  
According to the learned Counsel for the respondent, none these  
communications issued by the Recovery Officer in continuation of recovery

action U/s 8 of EPF & MP Act, 1952 can be challenged in an appeal filed U/s 7(I) of the Act. As per Sec 7(I),

“Appeals to the Tribunal –

- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government, or any authority, under the proviso to sub-section(3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof ], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such order.
- (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

It is clear from Sec 7(I) of the Act that no appeal is contemplated against any recovery action initiated by the Recovery Officer U/s 8 of the Act. Hence the appeal is not maintainable against the recovery action initiated by the respondent authority, since the original orders of assessment were not challenged by the appellant.

2. The learned Counsel for the respondent further pointed out that the communications which are challenged in this appeal are issued by the Recovery Officer during 2014-15 and the appeal is filed only on 16.03.2016.

3. As per Rule 7(2) of EPF Appellate Tribunal (procedure) Rules 1997 which is still applicable for filing of appeals under Section 7(I) of EPF & MP Act, 1952, any person aggrieved by an order passed under the Act, may prefer an appeal to the Tribunal within 60 days from the date of issue of order provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. As per the above provision, appeal from an order issued under the provisions of the Act need to be filed within 120 days. There is no power to condone delay beyond 120 days under the provisions of the Act.

4. The Hon'ble High Court of Kerala considered the issue in **Dr.A.V.Joseph Vs APFC**, 2009 (122) FLR184. The Court observed that

“maximum period of filing appeal is only 120 days from the date of impugned order. When the statute confers the power on the authority to condone the delay only to a limited extend, it can never be widened by any court contrary to the intention of the law makers”.

The Hon'ble High Court of Delhi in **APFC Vs Employees Appellate Tribunal**, 2006 (108) FLR 35 held that in view of the specific provisions under Rule 7(2) the Tribunal cannot condone the delay beyond 120 days. As a general proposition of law whether the Courts can condone the delay beyond the statutory limit provided under a special Acts was considered by Hon'ble Supreme Court in

**Commissioner of Customs & Central Excise Vs Hongo India Pvt Ltd**, (2009) 5 SCC 791 and held that whenever a statutory provision is made to file an appeal within a particular period the Court shall not condone the delay beyond the statutory limit applying Limitation Act. In **Oil & Natural Gas Corporation Ltd Vs Gujarat Energy Transmission Corporation**, (2017)5 SCC 42 the Hon'ble Supreme Court held that "the Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and therefore, the prescription with regard to the limitation has to be the binding effect and same has to be followed, regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provision and policy of legislation. Therefore it is uncondonable and cannot condone taking recourse to Article 142 of the constitution". The Hon'ble High Court of Patna considered the implication of the limitation U/s 7(I) of the EPF & MP Act read with Rule 7(2) of Employees Provident Fund Appellate Tribunal Procedure Rule, 1997 in **Bihar State Industrial Development Corporation Vs EPFO**, (2017) 3 LJ 174. In this case, the Employees Provident Fund Appellate Tribunal, New Delhi rejected an appeal from an order issued by Regional Provident Fund Commissioner, Bhagalpur on the ground of limitation. The Hon'ble High Court after examining various authorities and provisions of law held that,

“Para 15. Thus in view of the fact that the limitation is prescribed by specific Rule and condonation has also to be considered within the purview of the Rule alone and the provision of Limitation Act cannot be imported into the Act and Rules. This Court is of the view that the Tribunal did not had the powers to condone the delay beyond the period of 120 days as stipulated in Rule 7(2) of the Rules. “

The Hon'ble High Court of Kerala also examined the issue whether the EPF Appellate Tribunal can condone the delay beyond 120 days in **Kerala State Defence Service Co-operative Housing Society Vs Assistant P.F.Commissioner**, 2015 LLR 246 and held that the employer is precluded from approaching the Tribunal after 120 days and Section 5 of Limitation Act, 1963 is not applicable to proceedings before the Tribunal. In **M/s.Port Shramik Co-operative Enterprise Ltd Vs EPFO**, 2018 LLR 334 (Cal.HC), the Hon'ble High Court of Calcutta held that the limitation provided under Rule 7(2) of the Appellate Tribunal(Procedure) Rules, 1997 cannot be relaxed. In **EPFO represented by Assistant P.F. Commissioner Vs K. Nasiruddin Biri Merchant Pvt Ltd**, 2016 LLR 367(Pat.HC), the assessment of dues U/s 7A of the Act to the tune of Rs.3,36,30,036/- was under challenge. EPF Appellate Tribunal condoned the delay in filing the appeal and set aside the order. The Hon'ble High Court of Patna set aside the order of the Tribunal holding that the Tribunal has no power to condone delay beyond 120 days.

5. In view of the above, the appeal is not maintainable on the grounds that the appeal is not filed from an appealable order U/s 7(I) of the Act and further on the ground that the appeal is barred by limitation.

Hence the appeal is dismissed.

Sd/-  
(V. VIJAYA KUMAR)  
Presiding Officer