



सत्यमेव जयते

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

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

(Friday the 11th day of December, 2020)

Appeal No.37/2020

Appellant : M/s.Karimtharuvi Estates
Tea Division of Malankara
Plantation Ltd
Elappara
K Chappath P.O.
Idukki - 685505

By Adv.Jose Jacob

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Thirunakkara P.O.
Kottayam – 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 11.12.2020 and the same day this Tribunal-cum-Labour Court passed the following:

ORDER

Present appeal is filed against order no.KR/KTM/256/APFC/Penal Damage/14B/2019-2020/3105 dt.8.8.2019 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of provident fund contribution for the period from 10/2016 to 10/2018. The total

damages assessed is Rs.69,369/-. The demand for interest U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. When the appeal was taking for admission the learned Counsel for the respondent pointed out that the appeal is barred by limitation. It is seen that the impugned order is dt.08.08.2019 and the appeal is filed on 09.03.2020, a delay of more than 210 days.

3. As per Rule 7(2) of EPF Appellate Tribunal (procedure) Rules 1997 which is still applicable for filing of appeals under Section 7(l) 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(1) 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 LLJ 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. When we examine the Scheme of EPF & MP Act and various provisions as discussed above, it is very clear that the intention of the legislature is to exclude the provisions of Limitation Act by necessary implication. As already pointed out, when the Legislature prescribes certain period of limitation for filing appeals and further period of delay which can be condoned and the scheme of the Act necessarily implies exclusion of the provisions of Limitation Act, it is the duty of this Tribunal to give full effect to the same.

6. Appeal against Sec 7(O) order is not even otherwise, maintainable as there is no provision U/s 7(I) of the Act to file an appeal from Sec 7Q order.

7. For the reasons stated above, I am not inclined to interfere with the impugned orders on the ground of limitation. The learned Counsel for the appellant, however submitted that the issue involved is double payment of

contribution and not delayed payment of contribution. The respondent shall look into the matter and take corrective action, if there is any double payment as alleged by the appellant.

Hence the appeal is dismissed as barred by limitation.

Sd/-
(Presiding Officer)