



BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL~CUM~LABOUR COURT, ERNAKULAM

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

(Friday the 6th day of May, 2022)

Appeal No.13/2020

Appellant : M/s Josco Agencies
Moonalingal,
Kozhikode – 673 032.

By Adv. Abdul Salam.K

Respondent : The Assistant PF Commissioner,
EPFO, Sub Regional Office,
P.B.No.1806, Eranhipalam
Kozhikode – 673 006.

By Adv.(Dr)Abraham P.Meachinkara

This appeal came up for hearing on 04/05/2022
and this Industrial Tribunal cum Labour Court issued the following
order on 06/05/2022.

ORDER

Present appeal is filed from Order No. KR / KKD /11645
/Enf-II(2) /2019-20/4497 dt. 10/12/2019 assessing dues U/s 7A
of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) for the

period from 05/2017 to 09/2018. The total dues assessed is Rs.33,08,185/-.

2. The appellant is a partnership firm engaged in trading business. The appellant opted for voluntary coverage under the provisions of the Act. In the beginning the appellant was doing business profitably. Later due to various reasons, the appellant could not run the establishment in a smooth and profitable manner. The appellant was not even in a position to repay the loans taken from financial institutions. The appellant could not remit the contribution because of the financial constraints. The balance sheet for the year 2014-2015 to 2016-2017 is produced and marked as Exbt A2 to A5. The respondent authority initiated an enquiry U/s 7A of the Act on the basis of the report of the Enforcement Officer dt. 21/06/2019. A representative of the appellant attended the hearing and pleaded financial difficulties for non-remittance of provident fund contribution. Ignoring the contentions of the appellant the respondent issued the impugned order.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act and therefore the appellant is liable to comply with the statutory requirements U/s 6 of the Act. Since the appellant failed to remit the contribution for the period 05/2017 to 09/2018, an enquiry U/s 7A of the Act is initiated. The appellant was also even an opportunity to represent their case. A representative of the appellant attended the hearing admitted the liability and also stated that they could not remit the contributions in view of the financial difficulties. In **Associated India Pvt. Ltd Vs RPFC**, 1963 2 LLJ 652 the Hon'ble High Court of Kerala held that the employers are under legal obligation to deposit their share of contribution to the fund within the time limit prescribed, the moment the Act and Scheme become applicable to them, and no intimation or notice of any kind was necessary to issued by the authorities concerned. The Division Bench of the Hon'ble High Court of Kerala in **Calicut Modern Spinning and Weaving Mills Vs RPFC**, 1982 KLT 303 held that the employer is bound to pay contributions under the Act every month voluntarily irrespective of the fact that wages have been paid or not.

4. The appellant establishment did not remit the contribution for the period 05/2017 to 09/2018. The respondent, therefore, initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing and admitted the liability and pleaded that the appellant could not remit the contributions in view of the financial constraints. After taking into account the part remittance made by the appellant, the respondent issued the impugned order.

5. In this appeal also the learned Counsel for the appellant pleaded only financial difficulties for non-remittance of provident fund contribution. The learned Counsel for the respondent pointed out that the appellant establishment was spending huge amounts on employees cost which includes wages of employees of the appellant. According to him an amount of Rs.98,74,484/- for the year ending 31/03/2016 and an amount of Rs.1,54,70,354/-for the year 31/03/2017 and an amount of Rs.1,77,28,581/-for 31/03/2018 was spent towards employees cost, the major component of which is the salary of the employees. The appellant establishment failed to remit even the employees' share of contribution deducted from the

salary of the employees , there by committing an offense of breach of trust U/s 405 & 406 of Indian Penal Code.

6. It is seen that the appellant has no dispute regarding the assessment of dues which happens to be the regular dues of the employees. The assessment period is 2017-2018 and the appellant failed to remit the contribution even after 4 years, including the employees' share of contribution deducted from the salary of the employees. Some part payment made by the appellant is already accounted in the impugned order. It is clear that the appellant is only trying to delay the process of remitting the contribution by filing this appeal.

7. Considering the facts, circumstances pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/~

(V.VijayaKumar)
Presiding Officer