



सत्यमेव जयते

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

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

(Friday the 7th day of January, 2022)

Appeal No.603/2019
(Old No. ATA 835 (7) 2013)

Appellant : M/s. Vinod Chemicals (Pvt.) Ltd.,
289/252, Subhadrabhavan,
Aryanagar, Lucknow – 226 004.

By M/s. Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Sub-Regional Office
Kaloor , Kochi -682017

By Adv. Sajeev Kumar K. Gopal

This appeal came up for hearing on 20/09/2021 and this Industrial Tribunal cum Labour Court issued the following order on 07/01/2022.

ORDER

Present appeal is filed from Order No. KR/ KC/27567/Enf-1(3)/2012/8233 dt. 22/10/2012 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’) for the period from 04/2011 to 03/2012. The total dues assessed is Rs.19,97,810/-.

2. Appellant is a company having its registered office at Lucknow and units in various states. The appellant company is covered under the provisions of the Act in Uttar Pradesh under code No. UP/41454. The above number is allotted for all its units including the unit situated at Ernakulam. The salary and other benefits of the employees are centralized and is paid from its registered office at Lucknow. The appellant establishment was regularly paying contribution against the code number allotted at Lucknow. The respondent authority allotted code No. KR/27567 to the Ernakulam unit of the company. The appellant received a notice U/s 7A of the Act. The appellant attended the hearing and explained to the respondent authority that the contributions were paid at Lucknow. Without considering the submissions of the appellant, the respondent issued the impugned order. A true copy of the order dt.22/10/2012 is produced and marked as Annexure A1. The contribution in respect of employees working in Ernakulam unit were also paid at Lucknow Regional Office. True copies of the challan evidencing the contribution at Lucknow from 04/2011 to 03/2012 is produced and marked as Annexure A2 series. The Regional Office Lucknow has issued a

certificate dt. 25/09/2012 stating that the entire contribution had been paid by the appellant and there was no dues. A true copy of the certificate dt.25/09/2012 is produced herewith and marked as Annexure A3. The impugned order is issued without giving an opportunity to the appellant and the appellant had sufficient evidence to prove compliance at Lucknow. The appellant subsequently produced all the documents in respect of employees in Ernakulam unit before the respondent and these documents would established that the appellant was paying contribution in respect of eligible employees and those not covered are not eligible, as their monthly wages as on the date of the coverage was more than Rs.6500/-. The appellant produced the wage register in respect of employees at Cochin unit and register revealed that the salary of all the non-enrolled employees are beyond Rs.6500/- and are therefore excluded. After having found that the appellant establishment is covered under the provisions of the Act in Lucknow, the respondent authority ought not have conducted an enquiry U/s 7A of the Act. The appellant filed an application U/s 7B of the Act to review the earlier order U/s 7A and the same was also rejected by the

respondent authority. In the order, the respondent indicated the names of 3 employees and observed that the documents produced by the appellant was fabricated and thereby rejected all the documents. The finding of the respondent in respect of 3 employees is against the factual position as the wages shown in the first column, in the coverage proforma was actually the minimum wages payable under the statute. Going by the same records it is clear that the appellant was paying salary much more than the minimum wages. Similarly the wages shown in the 3rd column in the order is totally wrong and it appears that the respondent has given the names of 3 persons and the wages of other 3 persons. Copy of the wages register for the month of April 2011 containing the names of the above 3 employees is produced and marked as Annexure A5. The register would reveal that the employees eligible for coverage under EPF are covered and the remittance paid at Lucknow.

3. The respondent filed counter denying the above allegations. The appellant establishment is engaged in trading and commerce having units in different states and head quarters at Lucknow. The head quarters is covered under code No.

UP/41454. The appellant company vide their letter dt. 29/04/2011 requested to allot a code number to their Kochi branch for remitting contribution of their employees at Kochi branch. Accordingly the branch unit was covered U/s 2A of the Act and code number KR/27567 was allotted with effect from 01/04/2011. An Enforcement Officer of the respondent organization visited the appellant establishment in order to ascertain the compliance of the appellant establishment. It was noticed that the appellant has not started compliance with effect from 04/2011. The Enforcement Officer forwarded monthwise salary details of 130 employees for the period 04/2011 to 03/2012. The respondent authority initiated an enquiry U/s 7A and notice dt. 25/07/2012 was issued fixing the enquiry on 05/09/2012. The administrative executive attended the hearing and requested for adjournment. During the course of enquiry it was noticed the records now produced by the appellant was not tallying with the coverage proposal or the records submitted at the time of coverage or the inspection report submitted by the Enforcement Officer. On 08/12/2012 the representative of the appellant produced copies of wage register from 01/2011 to

03/2012. On verification of the wage register it was noticed that all the employees are entitled for P.F membership. The appellant did not produce the records such as balance sheet, ledger, cash book etc. The respondent authority after providing adequate opportunity and verifying the records available to him during the course of enquiry issued the impugned order. The assessment was done on the basis of the wage register of the appellant establishment produced before the respondent authority during the course of 7A enquiry. They submitted an application for review U/s 7B of the Act. The main contention in the review application was that the appellant had already remitted EPF contribution through its head office at Lucknow. The hearing of the review petition started on 30/11/2012 continued till 25/07/2013. After verifying the wage registers and other documents produce by the appellant/review petitioner the review petition was rejected. The respondent authority found that there is immense variation in records produced by the appellant before the Enforcement Officer during inspection at the time of coverage and also before the respondent authority in the proceedings U/s 7A of the Act. This compelled the respondent authority to doubt

the veracity of the records produced by the appellant establishment. Though the appellant was given more than adequate opportunity, the appellant failed to produce any records before the Enforcement Officer or the authorities U/s 7A and 7B to substantiate their claim that all the employees working and eligible to get membership in Kochi unit are extended benefits under the code number allotted by the Lucknow provident fund office. The appellant also could not convince the respondent for maintaining different records of employees for the same period. As already pointed out the code number is allotted to the Cochin Unit U/s 2A on the request of the appellant. On allotment of code number the respondent authority is competent to secure compliance from the appellant establishment. If the appellant establishment had been complying under the provisions of the Act at Lucknow it is not clear why the appellant applied for a separate code number for its unit at Kochi. The respondent authority has mentioned the name of 3 employees to show that the wages paid to these employees the differs in the company records produced during coverage and also in the wage register produced before Enforcement Officer during the inspection and

the original wage register produced before the assessing authority during Section 7A hearing. The contention of the appellant that the respondent authority in a casual manner found that more than 50 employees are not enrolled to the fund is not correct. The muster roll submitted by the appellant contains the names of 129 employees in March 2012, whereas the letter of the Regional Provident Fund Commissioner, Lucknow confirmed the compliance of only 51 employees for all their units of which only 24 employees belongs to Kochi branch. Copy of the muster roll for 03/2012 and confirmation letter of the Regional PF Commissioner, Lucknow, are produced and marked as Exbt R1 and R2 respectively. Para 26 of EPF Scheme 1952 interalia mandates that every employee employed in the connection with the factory or establishment to which EPF Scheme applied other than excluded employees shall be entitled and required to become member of provident fund from the date of joining the said establishment.

4. The appellant is an establishment having its headquarters at Lucknow, Uttarpradesh and units in different parts of the country. The appellant establishment is covered in the Lucknow

office of the respondent organization. According to the learned Counsel for the appellant, the provident fund contribution in respect of all the employees at headquarters and also regional units are being paid in the provident fund code number allotted by the Lucknow office of the respondent. According to the learned Counsel for the respondent the Cochin unit of the appellant establishment was allotted a code number U/s 2A of the Act with effect from 01/04/2011 on their request dt. 28/04/2011. Having allotted a number at Kochi, it is the responsibility of the respondent authority to ensure compliance. Since there was no compliance, the respondent authority deputed an Enforcement Officer to secure complaints from the appellant establishment. The Enforcement Officer after investigation took the details of the employees working in their cochin unit, the wages paid and submitted a report to the respondent authority. The respondent authority initiated an enquiry U/s 7A of the Act. The appellant was represented in the enquiry. The respondent found that the documents now produced by the appellant do not tally with the information furnished by them at the time of coverage or the inspection report submitted by the Enforcement

Officer . The representative of the appellant produced the wage register for relevant period. They did not produced any documents such as balance sheet ledger or Cash book. The respondent authority therefore issued an assessment order on the basis of the wage register produced by the appellant. The appellant filed a review application on 30/11/2012. In the review application the appellant took a stand that all the eligible employees working in their Cochin unit are covered at Lucknow and contribution is also being paid in the Regional PF Office at Lucknow. The appellant failed to produced the relevant documents to substantiate the claim. The appellant kept on asking for time and continued till 25/07/2013. Since the appellant failed to produce any additional document to substantiate their compliance at Lucknow the respondent rejected the review application U/s 7B of the Act.

5. In this appeal also the appellant took a stand that the employees working at Kochi unit are covered in the original code number allotted by the Lucknow office of the respondent organization. The appellant produced copies of challans as Annexure A2 series having remitted the contribution in respect of

all the employees including their unit at Kochi. On a perusal of the Annexure A2 series of challans, it is seen that the total subscribers for whom contribution is paid at Lucknow varied from 5 employees to a maximum of 25 employees for their headquarters at Lucknow and all the branch units situated all over India. Hence it is not possible to accept the contention of the learned Counsel for the appellant that all the employees working in Cochin unit of the appellant was also extended the benefit of Social Security under the code number allotted at Lucknow. The muster roll of the appellant establishment for its Cochin unit for the month of March 2012 produced by the respondent as Exbt R1 shows that the total employment strength of the appellant at Cochin was 129, whereas the challan produced by the appellant shows that the appellant establishment has remitted contribution in respect of 5 employees in the month of 10 /2011. Another argument made by the learned Counsel for the appellant is that the appellant enrolled all the eligible employees and those who are not enrolled to the fund are not eligible to be enrolled to provident fund membership. To substantiate their claim the appellant produced one page of the

wage register for the month of April 2011. Though the total employment strength as on 01/04/2011 as per the wage register, Annexure A5, is 72, the appellant produced only the details of wage register of 12 employees. Even from the available data produced by the appellant in Annexure 5, it is clear that all the employees except one are eligible to be enrolled to provident fund membership and there is no basis in evidence in the claim of the appellant that all the eligible employees are enrolled at Lucknow Office. The learned Counsel for the respondent pointed out that the documents now produced by the appellant cannot be relied on since the documents produced before the 7A authority, before the inspection authority and also the data furnished by the appellant along with the request for allotment of code number substantially varies. The respondent authority has clearly pointed out this position in the order issued U/s 7B of the Act. The learned Counsel for the respondent also pointed out relying on Exbt R2 dt. 17/07/2013, received from the Regional PF Commissioner, Lucknow that the claim of the appellant that all the employees are enrolled at Lucknow is not correct. On a perusal of Exbt R2, the Regional PF Commissioner,

Lucknow informed the Regional PF Commissioner, Kochi that for the year 2011-12, the appellant remitted contribution in respect of 51 employees. According to the learned Counsel for the respondent there are only 24 employees from the Kochi unit for whom contribution is paid at Lucknow whereas there were 129 employees working in the appellant establishment, Cochin unit during the relevant time as per muster roll of the appellant establishment .

6. On verification of the records produced in this appeal by both the parties, it is clear that the appellant establishment has not come with clean hands before this Tribunal. There is clear suppression and manipulation of records. According to the appellant they never requested for allotment of separate code number for their Cochin unit. However according to the respondent authority a separate code number is allotted to the appellant at Cochin on their request dt. 28/04/2011. Since there is no compliance the Enforcement Officer conducted an inspection verified the records, took copies of the documents and submitted the same to the respondent authority. The respondent authority initiated an enquiry U/s 7A. During the enquiry the

appellant produced another set of documents. However the respondent authority issued the impugned order on the basis of the salary register produced by the appellant. In the appeal, the appellant came with a contention that the appellant establishment is complying for all the eligible employees at Cochin also in the code number allotted at Lucknow. The copies of the challans as well as the Exbt R1 letter of the Regional PF Commissioner, Lucknow clearly disprove the claim of the learned Counsel for the appellant that the appellant is complying for all employees at Cochin at Lucknow. The claim regarding the eligibility of the employees is also disproved by the document produced by the appellant himself in this enquiry. Hence it is clear that when the appellant found that it is inconvenient for them to continue compliance at Cochin, they came with a pleading that all the employees at Cochin are extended social security benefits through the code number allotted at Lucknow. It may be relevant to pointed out that this stand was not taken by the appellant before the respondent authority during the course of Sec 7A enquiry.

7. Taking into account all the above factors and evidence on record I am not inclined to interfere with the impugned order. However if the appellant succeeds in producing evidence that some of the employees employed in Cochin unit is extended the social security benefits at Lucknow, the dues in respect of those employees may be excluded while recovering the assessed dues.

Hence the appeal is dismissed.

Sd/-

(V.Vijaya Kumar)
Presiding Officer