



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

सत्यमेव जयते

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

(Thursday the 2nd day of September, 2021)

Appeal No.623/2019

(Old No. ATA.544 (7)/ 2013)

Appellant

M/s. Sree Sakthi Paper Mills Ltd
(M/s. Cella Space Ltd)
Sree Kailas, 39/2724 A
Kochi – 682016.

By Adv.P. Ramakrishnan &
Adv.C. Anil Kumar

Respondent

The Regional PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi – 682 017

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 30.03.2021
and this Industrial Tribunal-cum-Labour Court issued the
following order on 02/09/2021 .

ORDER

Present appeal is filed from order No. KR /
KC / 15130 /Enf-1(3) / 2013 / 4829 dt. 12/07/2013
issued U/s 7A of EPF & MP Act, 1952 (hereinafter referred
to as ‘the Act’) assessing dues on evaded wages for various

establishments including the appellant establishment for the period from 03/2009 to 04/2012. Total dues assessed against the appellant is Rs. 54,99,268/-.

2. The appellant is a Public Limited Company engaged in the manufacture of craft paper and duplex board. The appellant company employed around 350 employees in their factories at Edayar in Ernakulam district and Chalakkudy in Trichur district of Kerala. The service conditions of the employees are governed by long term settlements between the management and trade union representing the employees. A copy of the settlement dt. 31/10/2003 of the Edayar unit is produced and marked as Annexure A1. A settlement dt. 21/11/2003 of the Chalakkudy is produced and marked as Annexure A2. On 27/02/2012 an Enforcement Officer of the respondent organization conducted an inspection at the head quarters of the factories. In the inspection report, the Enforcement Officer pointed out that provident fund contribution is not paid on certain allowances. A true copy of the report of the Enforcement Officer is produced and marked as Annexure A3. The appellant industry is not notified under Minimum Wages Act and the terms and conditions of employment and

wages of employees are based on Annexure 1 settlements. The appellant was remitting contribution on basic wages and DA. The appellant thereafter received a notice dt.18/06/2012 from the respondent regarding an enquiry U/s 7A of the Act. An opportunity for personal hearing was granted on 28/06/2012. A true copy of the notice is produced and marked as Annexure A4. The enquiry was held on various dates. The appellant appeared and produced the documents as per the notice on 28/06/2012. The appellant produced the wage statement from December 2011 to May 2012. On 24/07/2012 the appellant produced the wage statement from 03/2009 to 02/2011. A soft copy of the above were also provided on 23/11/2012. An authorized representative appeared and also explained the impact of Annexure A1 & A2 settlements and various allowance being paid to the employees. The wage statement for the month of 03/2012 of the Edayar factory and Chalakudy factory are produced and marked as Annexure A5 & A6 respectively. The respondent thereafter issued the impugned order, a copy of which is produced and marked as Annexure A7. The respondent authority calculated the dues excluding the allowances such as HRA and overtime

paid to the employees. Annexure A1 & A2 are settlements which clearly shows the terms of contract of employment and wages and allowances payable to its employees. Hence the allowances payable by the appellant in terms of Annexure A1 & A2 settlement are excluded from the definition of basic wages. Annexure A1 & A2 settlement are statutory agreements arrived in the presence of Conciliation Officer under Industrial Disputes Act and therefore the respondent authority ought not have considered the same for the purpose of assessment of provident fund dues.

3. The respondent filed written statement denying the allegations in the appeal memorandum. The appellant establishment is covered under the provisions of the Act w.e.f 31/03/1996. The Enforcement Officer of the respondent organization who conducted the inspection of the appellant establishment reported that out of Rs.5,80,72,000/- expended by the appellant as wages for the year 2010-11 as per the approved profit and loss account only Rs.1,25,18,602/- was considered for computing EPF dues. It was also noticed that majority of the above payments were made in the form of allowances and excluded from calculation of PF dues. The allowances paid

by the appellant establishment to employees include HRA, education allowance, conveyance allowance, special allowance, washing allowance, incentive , overtime , special overtime etc. To examine the issue an enquiry U/s 7A of the Act was initiated. A representative of the appellant attended the hearing and produced the records called for. From the records produced by the appellant establishment it is seen that provident fund contribution is remitted only for basic and DA. The representative who attended the hearing clarified that provident fund deduction is made on the basis of settlement between the management and trade unions. The respondent authority after verifying the documents came to the conclusion that various allowances earned by the employees in terms of the contract are to be treated as basic wages as defined U/s 2(b) of the Act and the appellant is liable to pay contribution on the same subject to the wage limit of Rs.6500/-. The amounts given to the employees on account of HRA and overtime allowances are excluded from provident fund liability. The claim of the appellant that the allowances paid as per terms of Annexure A1 & A2 settlement are excluded from the definition of basic wages is absolutely incorrect. From the definition of basic wages as

per Sec 2(b) of the Act, it is clear that all emoluments which are earned by an employee other than excluded components would be the basic wages under the Act. Even in Annexure A1 & A2 there is no mention regarding provident fund deduction. In ***Whirlpool India Ltd Vs Regional Provident Fund Commissioner***, WP (C) No. 7729/1999 the Hon'ble High Court of Delhi held that any other similar allowance mentioned in Clause 2 of Sec 2(b) of the Act takes its colour from Commission because the said expression uses the word similar allowance. There is no similarity in the nature of various allowances mentioned in Clause 2 and they are founded on wholly unrelated considerations. The Hon'ble High Court of Kerala in ***Regional PF Commissioner Vs Administrator Cosmopolitan Hospital Pvt. Ltd***, OP. NO. 21636/2001 held that simply because the employer and employees by agreement, decide that contribution is not payable in respect of a payment, liability under the Act cannot be avoided if such payment answers the definition of basic wages as defined under the Act. To hold that the employees and the management can by agreement avoid payments of contribution to provident fund would be against the provisions of the Act and will lead to disastrous

consequences. Adhoc salary arrears earned by the employees are to be treated as basic wages U/s 2(b) of the Act. The Hon'ble Supreme Court of India in ***Prantiya Vidyut Mandal Mazdoor Federation Vs Rajasthan State Electricity Board and Others***, AIR 1992 SC 1737 held that arrears of wages as a result of wage increase would come within the definition of basic wages. In ***Poombuhar Shipping Corporation Vs RPFC*** the Hon'ble High Court of Madras held that incentives will attracts provident fund deduction as the same is paid only for the work done by the employees during the course of 8 hours. In ***Gujarat Cympromet Ltd Vs APFC***, 2004 (103) FLR 908 the Hon'ble High Court of Gujarat held that the term of basic wages as defined under Sec 2(b) of the Act includes all emoluments received by the employees including medical allowance, conveyance allowance and lunch allowance for the calculation of provident fund dues.

4. During the course of hearing of the learned Counsel for the appellant submitted that the appellant establishment is closed as per the order of the Kerala State Pollution Control Board and also as per the direction of the Hon'ble High Court of Kerala. He also produced a complete

set of 9 additional documents to substantiate their case regarding the closure of the appellant establishment w.e.f 27/06/2016.

5. The learned Counsel for the appellant also filed an IA stating that the name of an appellant establishment is changed from Sreesakthi Paper Mills Ltd to M/s Cella Space Ltd, pleading that the name of the appellant in the appeal also may be changed to M/s. Cella Space Ltd as approved by the registrar of companies. The IA is allowed and the change of name is incorporated in cause title of appeal.

6. The main issue involved in this appeal is whether various allowances being paid to its employees by the appellant as per Annexure A1& A2 settlements will come within the definition of basic wages and will attract provident fund deduction. According to the learned Counsel for the appellant the allowances which are being paid on the basis of Annexure A1 & A2 settlements as per a conciliation agreement signed between the management and the trade union representing the employees in the presence of the Conciliation Officer under Industrial Dispute Act will not

attract provident fund deduction. The learned Counsel for the respondent on the other side argued that it is a settled legal position that the management and employees cannot decide the statutory liability by an agreement. If there is any provision which is in violation of the provisions of the statute in the agreement, it will be ab initio void. I am inclined to accept the argument of the learned Counsel for the respondent. The respondent authority U/s 7A of the Act has the power to examine and decide whether certain allowances being paid to the employees will attract provident fund deduction. That is exactly what is done by the respondent authority in this case.

Section 2(b) : “basic wages” means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include :

1. cash value of any food concession.
2. Any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus, commission or any

other similar allowances payable to the employee in respect of his employment or of work done in such employment.

3. Any present made by the employer.

Section 6: Contributions and matters which may be

provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, Dearness Allowance, and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishment which the Central Government, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to

the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted.

Provided further that there where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding of such fraction to the nearest rupee half of a rupee , or quarter of a rupee.

Explanation 1 – For the purpose of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country. The Hon'ble Supreme Court of India in **Bridge & Roof Company Ltd Vs Union of India** , 1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

- (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

The Hon'ble Supreme Court of India ratified the above position in **Manipal Academy of Higher Education Vs PF Commission**, 2008(5)SCC 428. The above tests was against reiterated by the Hon'ble Supreme Court in **Kichha Sugar Company Limited Vs. Tarai Chini Mill Majzoor Union** 2014 (4) SCC 37. The Hon'ble Supreme Court of India examined all the above cases **in RPFC Vs Vivekananda Vidya Mandir and Others**, 2019 KHC 6257. In this case the Hon'ble Supreme Court considered whether travel allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases the Hon'ble Supreme Court held that " the wage structure and the components of salary have been examined on facts, both by

the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflage as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference.” The Hon’ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of **EPF Organization Vs MS Raven Beck Solutions (India) Ltd**, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon’ble Supreme Court to conclude that

“ this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, forms an integral part of basic wages and as such the amount paid by way of these allowance to the employees by the respondent establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent establishment by classifying it as payable for

uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of provident fund contribution by the respondent establishment ”.

In **Montage Enterprises Pvt Ltd Vs EPFO**, 2011 LLR 867 (MP.DB) the Division Bench of the Hon’ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In **RPFC West Bengal Vs. Vivekananda Vidya Mandir**, 2005 LLR 399 (Calcutta DB) the Division Bench of the Hon’ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages . This decision of the Hon’ble High Court of Calcutta was later approved by the Hon’ble Supreme Court in **RPFC Vs Vivekananda Vidya Mandir** (supra). In **Mangalore Ganesh Beedi Workers Vs APFC**, 2002 LIC 1578 (Kart.HC) the Hon’ble High Court of Karnataka held that special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In **Damodar Valley Corporation Bokaro Vs. Union of India**, 2015 LIC 3524 (Jharkhand HC) the Hon’ble High Court of

Jharkhand held that special allowance paid to the employees will form part of basic wages. In view of the above finding it is clear that the conveyance allowance paid by the appellant will attract provident fund deduction.

7. In the present case it is seen that the appellant establishment was paying contribution on basic and DA. The respondent authority has excluded HRA and overtime from the definition of basic wages as excluded allowances. The allowance that are excluded by the appellant are education allowance, conveyance allowance, special allowance, washing allowance, incentive, High BF, Adhoc allowance and salary arrears. By applying the various tests evolved by the Hon'ble Supreme Court, it is seen that conveyance allowance, special allowance, washing allowance, incentive, High BF incentive etc. are being paid uniformly and generally to all the employees and therefore such allowances will attract provident fund deduction. However it is seen that education allowance is being paid only to very few employees and therefore will not satisfy the tests evolved by the Hon'ble Supreme Court. As rightly pointed out by the learned Counsel for the respondent the salary arrears also will attract provident fund deduction.

Since majority of the employees were drawing more than the statutory limit of Rs. 6500/- and the assessment of dues as per the impugned order is confined to this statutory limit, the above findings will not in any way impact the assessment of provident fund dues.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer