



सत्यमेव जयते

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

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

(Monday the 7th day of June, 2021)

APPEAL No.631/2019

(Old No. ATA 543(7) 2013)

Appellant

M/s. New Zeenath Life Style Planet
Bypass Road,
Kondotty,
Malappuram – 673 638.

Adv. Hari Kumar G

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office,
Eranhipalam PO
Kozhikode – 673 006

Adv. Abraham P Meanchikara

This case coming up for final hearing on
16/03/2021 and this Tribunal-cum-Labour Court on
07/06/2021 passed the following:

O R D E R

Present appeal is filed from order No.KR/KK/
28445/Enf-1(4)/2012/3769 dt.17/12/2012 assessing dues
U/s 7A of EPF and MP Act, (hereinafter referred to as 'the Act')

for the period from 08/2011 to 10/2012. The total dues assessed is Rs.4,10,784/-.

2. The appellant is a partnership firm constituted on 13/08/2011 and is engaged in the textile business. The business activity started from January 2012. On 13/12/2011 a squad of Enforcement Officers visited the appellant establishment. The appellant on 09/05/2012 received a coverage memo alleging that the appellant establishment engaged 50 employees as on 13/08/2011 and is therefore coverable under the provisions of the Act. The appellant filed an objection to the coverage memo stating that the appellant never engaged more than 15 employees. A copy of objection dt.02/06/2012 is produced and marked as Annexure A2. The respondent issued a notice dt.26/06/2012 U/s 7A of the Act, directing the appellant to appear before the respondent and produce the records on 02/07/2012. On 10/07/2012 the Enforcement Officer of the respondent also issued a notice directing the appellant to produce the documents before him. On 05/09/2012 the respondent issued another summons directing the appellant to appear before him on 20/09/2012.

A representative of the appellant appear before the Enforcement Officer and the hearing was adjourned to 26/09/2012, 17/10/2012, 05/11/2012 and to 21/11/2012. The appellant reiterated the objection in Annexure A2 representation. However ignoring the contention of the appellant the respondent issued the impugned order. The appellant approached the Hon'ble High Court of Kerala in W.P(C) No.15064 of 2013 and the Hon'ble High Court dt.18/06/2013 disposed of the Writ petition holding that an alternative remedy is available to the appellant. A copy of the said judgment is produced and marked as Annexure A3. The appellant filed a Review Petition No.535 of 2013 in W.P(C) No. 15064 of 2013 on the ground that the appeal will be barred by limitation and the Hon'ble High Court of Kerala vide order dt.09/07/2013 disposed of the Review Petition directing the respondent that since the Writ Petition was pending before the Hon'ble High Court that period shall be excluded while calculating the period of limitation. The impugned order is a not a speaking order. The respondent did not consider any of the objections raised by the appellant before him. The respondent failed to notice that the employment strength of appellant never

reach 20 and therefore the appellant is not coverable under the provisions of the Act.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provision of the Act w.e.f 13/08/2011. The appellant defaulted in payment of contribution in respect of 17 employees under the provision of the Act. Hence notice was issued to the appellant U/s 7A of the Act fixing the date of enquiry on 20/09/2012. The enquiry was adjourned to various dates but the appellant failed to produce any documents as required in the notice. The appellant claimed that the employees strength of the appellant establishment never reached 20 and the rest of the person available in shop during the visit of the squad of Enforcement Officers were the relatives of the Managing Partner of the appellant and were helping the appellant during the festival season.

4. The learned Counsel for the appellant submitted that the impugned order is not at all a speaking order and the appeal is to be allowed on that ground alone. The learned

Counsel for the appellant relied on the decision of the Hon'ble High Court in ***Sivaramakrishna Iyer Vs RPFC, 1988 KHC 204*** argued that the assessing authority is obliged to issue a speaking order of his assessment setting out the reason of it, so that it is readily exposed to the scrutiny of the Court. The learned Counsel for the appellant also relied on a recent decision of the Division Bench of the Hon'ble High Court of Kerala in ***Standard Furniture, Calicut Vs Registrar, EPF Appellate Tribunal and Another, 2020(3) KHC 793*** wherein the Division Bench of Hon'ble High Court of Kerala held that it is mandatory on the part of the respondent authority U/s 14B of the Act to issue a speaking order. Both the above cited decision are issued by the respondent authority U/s 14B of the Act levying damages against the petitioner employer. In ***Food Corporation of India Vs Provident Fund Commissioner and Another, 1990 KHC 950***, the Hon'ble Supreme Court of India while discussing the proceedings U/s 7A of the Act held that the respondent authority should exercise all his powers to collect all evidences and collate all the material before coming to proper conclusion. It is seen that the appellant establishment disputed coverage before the respondent authority U/s 7A of the Act on

the ground that they never employed 20 persons in appellant establishment on 13/08/2011 or any other subsequent date. However on perusal on impugned order it is seen that there is no clear finding by the respondent authority as to how he arrived at the conclusion that the appellant establishment engaged more than 20 persons as on the date of coverage. It is also seen from the impugned order that the assessment is made only for 17 employees. Hence it is not possible to arrive at a conclusion that whether the appellant establishment is coverable under the provision of the Act on the basis of evidence available in the file. The appellant ought to have produced the relevant documents before the respondent authority to substantiate his case that he never employed 20 persons during the relevant point of time. The respondent will have to decide the applicability on the basis of the evidence available, before assessing the dues payable by the appellant establishment. There is also a finding by the respondent authority in the impugned order that at present only 29 employees remain in the establishment. Again it is not clear from the impugned order which are the records produced by the appellant and which are the document relied on by the respondent authority to decide

the applicability of the provisions of the Act to the appellant establishment.

5. In view of the above it is not possible to sustain the impugned order.

Hence the appeal is allowed and the impugned order is set aside and the matter is remitted back to the respondent to redecide the question of applicability and assess the dues as directed above, within a period of 6 months from the date of receipt of the order by the appellant. If the appellant failed to appear, or produce the records to decide the matter finally the respondent may decide the matter according to law.

Sd/-
(V. Vijaya Kumar)
Presiding Officer