



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

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

(Monday the 2nd day of August, 2021)

Appeal No. 20/2019

(Old No.ATA-743(7)2012)

Appellant

M/s. Nirakkoottu Textiles
Behind Devi Temple, Cherthala
Alappuzha – 688524.

By Adv. Sankarankutty Nair

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi– 682017.

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 16.04.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 02/08/2021.

ORDER

Present appeal is filed from order No. KR/KC/27428/Enf -2(1)/2012/7111 dt.14.8.2012 confirming the coverage of the appellant establishment U/s 7A of the Act clubbing 2 units under the provisions of EPF & MP Act, 1952 (hereinafter referred to as ‘the Act’).

2. The appellant is a small scale textile shop owned by Mr. Joe Philip. It has no branches or other units. The appellant employed 15 employees as on January 2010. The Enforcement Officer of the respondent organization inspected the appellant establishment on 13/01/2011 and took some records and another squad of Enforcement Officers made an inspection of the appellant establishment on 14/01/2011. They insisted that the appellant establishment is coverable from 02/01/2010. The appellant disputed the coverage. Without considering the facts of the case, the respondent issued a coverage memo dt. 20/04/2011 covering the establishment from 02/01/2010 stating that there were 21 employees as on that date. The records seized by the respondent would also prove that the number of employees were 15 as on 02/01/2010. The Enforcement Officers took the employees engaged by another unit as part of the appellant establishment to cover the same under the provisions of the Act. The respondent initiated an enquiry U/s 7A of the Act to decide the question of applicability as the coverage was disputed by the appellant. The appellant M/s Nirakkoottu Textiles is small scale textile shop and it has no branches. It is an establishment having its own entity and independent

existence. It is an establishment registered under Kerala Shops and Commercial Establishments Act. Copy of the registration certificate and inspection note issued by the Assistant Labour Commissioner Cherthala are produced and marked as Annexure A2 and A3 respectively. The appellant is an assessee under income tax and sales tax Acts. The profit and loss account and balance sheet for 2009-10 & 2010-11 are produced and marked as Annexure A4 & A5. The Enforcement Officer and Squad of Officers took 6 employees working in Nirakkoottu Sarees and Silks to arrive at the conclusion that the appellant establishment was engaging 21 employees. Nirakkoottu Sarees and Silks is an establishment owned by another person and it is defunct since 2007 and sold in January 2010 with its building and goodwill as can be seen from the information received from the Municipality and Sales Tax Department. After receipt of the coverage notice, the appellant send a reply dt. 18/05/2011 disputing the coverage. A copy of the said letter is produced and marked as Annexure A7. The respondent initiated an enquiry U/s 7A of the Act vide notice dt. 17/01/2012. The enquiry was scheduled on 07/03/2012. A copy of the notice is produced and marked as Annexure A8. The appellant appeared before the respondent

authority through an Advocate and filed a detailed statement disputing the coverage. The copy of the written statement is produced and marked as Annexure A9. The appellant also produced all relevant records before the respondent authority. Without considering any of the contentions and documents the respondent issued the impugned order. There is absolutely no justification for the respondent in including the employees of another independent establishment especially when that unit was closed and sold out long back. The ESI Corporation extended the Social Security benefit under the said Act w.e.f 28/06/2011 on the basis that the appellant employed 15 employees. A copy of the notice issued by ESIC is produced and marked as Annexure A10.

3. The respondent filed counter denying the above allegations. The Enforcement Officer of the respondent organization who is the inspector appointed U/s 14 of the Act visited the appellant establishment to examine the possibility of the coverage of the appellant establishment under the provisions of the Act. The appellant establishment failed to produce any documents for inspection. The proprietor of the appellant establishment was not present and the staff present in the establishment provided a list of 22 employees showing

the name of the staff against whom a particular bill had been made. The Enforcement Officer also issued a notice to the proprietor of the appellant establishment for production of records. A squad of Enforcement Officers inspected the appellant establishment on 14/01/2011. As the staff refused to co-operate, the Squad of Officers prepared a spot mahazer and seized copies of audited Balance Sheet and Profit and Loss Account for the year 2009-10, copy of the Vat registration, service records , copies of attendance register for 10/2009 to 7/2010 and wage registers for 10/2009 to 4/2010. The Squad of Officers reported about 40 employees were working in the appellant establishment as on the date of the inspection. A copy of the mahazer dt. 14/01/2011 and the list of employees are produced and marked as Exbt R1. In response to the notice issued to the appellant to produce documents to prove ownership, date of commencement, muster roll and wage register in respect of permanent, temporary, casual employees from the date of commencement, the books of accounts, IT returns etc., a representative of the appellant attended the office without any documents. Later on they produced the attendance details for the period from 01/01/2011 to 31/1/2011 taken from the punching machine which showed

the details of 15 employees. No other records were produced. On verification of the registers, it is seen that the same is maintained in the name of Nirakkoottu Textiles and in the name of Nirakkoottu Saree Kendra. Nirakkoottu Textiles had an employment strength of 15 and M/s Nirakkoottu Saree Kendra had an employment strength of 6 employees. The Enforcement Officer recommended coverage on the basis of the records . It was reported that the Nirakkoottu Textiles and Nirakkoottu Saree Kendra are owned by the husband and wife and the total employment strength reached 21 as on 2/01/2010. Accordingly a coverage notice dt. 20/04/2011 was issued to the appellant U/s 1(3) (b) of the Act. The appellant disputed the applicability on the ground that he employed only 15 employees. It was also contended that some of the staff working in the establishment were trainees. The appellant also contended that the proprietrix of Nirakkoottu Sarees and Silks is Mrs. Simi Joe and the establishment stopped functioning from 2007. The enquiry U/s 7A was initiated to decide the applicability and was scheduled on 07/03/2012. The appellant appeared through his Advocate. On his request the enquiry was adjourned to 19/04/2012, 30/04/2012 and 11/05/2012. The Advocate also filed a statement that the appellant

establishment did not engage 20 employees as on 01/2010. It was also argued that the appellant establishment has no connection with M/s Nirakkoottu Silks and Sarees. The enquiry was further adjourned 05/6/2012 and 26/12/2012 for production of documents. The Advocate produced some of the documents on 27/06/2012. After considering the documents produced and submissions made by the Advocate for the appellant, the respondent authority issued the impugned order confirming the coverage with effect from 01/2010. The respondent found that the contention of the appellant that M/s Nirakkoottu Sarees and silks was defunct since 2007 is not correct. In the letter dt. 16/12/2010 of sales tax office Cherthala stated that the establishment stopped functioning on 07/01/2010. As per letter dt. 07/06/2012 received from Public Information Officer, Cherthala Municipality, it is seen that the establishment is closed during 2010-11. Further the muster roll of M/s Nirakkoottu Saree Kendra seized from Nirakkoottu Textiles shows that Nirakkoottu Saree Kendra was working till July 2010, ie even after the coverage of the appellant establishment w.e.f 02/01/2010. It is clear from the records placed before the respondent authority that the M/s Nirakkoottu Textile employed 15 employees as per the

muster roll of the January 2010 and M/s Nirakkootu Saree Kendra employed 6 persons. Hence the total employment strength crossed 20 as on January 2010. The muster roll of both these establishments were maintained in the premises of M/s. Nirakkootu Textile which proves that the appellant establishment had managerial control over the M/s Nirakkootu Saree Kendra. The contention of the appellant that the appellant establishment has no relationship with M/s Nirakkootu Sarees and Silks is also not correct. The proprietrix of M/s Nirakkootu Sarees and Silks, Smt. Simi Joe, is the wife of Shri. Joe Philip who is the proprietor of Nirakkootu Textiles. The appellant failed to maintain any proper records as required under Kerala Shops and Commercial establishments Act and Minimum Wages Act. The same is evident from the inspection report of the Labour Officer, Cherthala. A copy of the inspection report of the Labour Officer is produced and marked as Exbt R3. The report shows that the appellant establishment is not maintaining the records on day to day basis to show the actual employment strength. The employee details are maintained in loose sheets without any authentication. From the loose sheets it is seen that the establishment is employing atleast 40 persons. The

Enforcement Officer who conducted inspection located some of these records which showed that the appellant establishment is maintaining two sets of records in the name of M/s Nirakkoottu Textiles another in the name Nirakkoottu Sareekendra. These records also show that Nirakkoottu Sareekendra was working atleast upto 07/2010. It is therefore clear that the appellant establishment is maintaining false records to avoid statutory obligation. According to the letter 18/05/2011 issued by the appellant they were only having 15 employees. Rest of them were working as trainees for experience. The definition of 'employee' U/s 2(f) do not exclude trainees unless they are engaged as per Apprentice Act or under Standing Orders of the establishment. Sec 1(3) (1) uses the word 'persons' for the purpose of coverage . The legislative intentions is very clear that for the purpose of coverage only 20 persons are required and not 20 employees. It is clear from the mahazer prepared by the squad and also the wage registers seized by the squad that the employment strength crossed 20 as on 01/2010 and therefore the appellant establishment is coverable under the provision of the Act from the said date.

4. None of the documents alleged to have been filed along with the counter are seen enclosed alongwith the counter. The

appellant also produced some additional documents to substantiate their claim that M/s. Nirakkoottu Sareekendra is closed and sold before the date of coverage. The additional documents produced by the appellant particularly the settlement deed is incomplete and is not a certified copy.

5. The appellant establishment is disputing the coverage of the establishment under the provisions of the Act from January 2010. The main grounds pleaded are that the appellant establishment never employed 20 persons for the purpose of coverage. Further it is also pleaded that the appellant establishment M/s Nirakkoottu Textiles is clubbed with an another unit M/s Nirakkoottu Sarees and Silks which is an independent unit having no relationship to the appellant establishment. Further it is also pleaded that M/s Nirakkoottu Sarees and Silks is defunct from 2007 and is sold in the year 2010.

6. It is seen from the pleadings that an Enforcement Officer of the respondent's office conducted an inspection of the appellant establishment on 13/01/2011 and found that more than 20 employees were working in the appellant establishment. Since the appellant failed to co-operate with the

inspection, a Squad of Officers were deputed on 14/01/2011. The Squad also reported that there were 40 employees working in the appellant establishment during their visit. The Enforcement Officers also seized some of the records available in the premises of the appellant establishment. The respondent authority came to the conclusion that the appellant establishment along with the M/s. Nirakkoottu Sarees and Silks employed more 21 employees as on 02/01/2010. The respondent authority also found that the proprietrix of M/s. Nirakkoottu Sarees and Silks is none other than the wife of proprietor of M/s. Nirakkoottu Textiles. It is also found that both the units are working from the same premises. The squad of Enforcement Officers seized the attendance register of both the units from M/s. Nirakkoottu Textiles which shows that there is managerial and administrative control between the two units. The trading and profit and loss account for the year ended 31/03/2010 in respect of M/s Nirakkoottu Textiles does not indicate any financial transaction with M/s Nirakkoottu Textiles and Nirakkoottu Sarees and Silks. However, Annexure A4 is only a summary statement. On a verification of the impugned order, it is seen that the respondent authority considered names of employees present and working in the

establishment as on 13/01/2011 and the sales vouchers wherein the name of the sales girls and boys were reflected. The respondent authority also found that the certain sales bills from Nos.365-529, the names of few more employees are reflected. The respondent authority also verified the leave register and found that names of 17 employees were entered in the same. In view of non co-operation from the side of the appellant the respondent authority concluded that the employment strength of the appellant establishment far exceeded the statutory limit of 20 as on the date of coverage. With regard to the claim of the appellant that M/s Nirakkoottu Sarees and Silks was defunct from 2007, it is established through the registers seized by the Squad of Officers that M/s Nirakkoottu Sarees and Silks were in existence atleast upto 07/2010. The attendance register of M/s Nirakkoottu Sarees and Silks also reflects the attendance of employees as on that date.

7. The basic dispute in this appeal is with regard to the clubbing of M/s. Nirakkoottu Textiles and M/s Nirakkoottu Sarees and Silks. The Hon'ble Supreme Court of India and various High Courts have come up with the principles and tests to be follow while deciding the issue. The general tests being

financial managerial and administrative control and inter-dependance of the two establishments. However none of this tests can be said to be final and is to be decided on the basis of facts of each case. In ***Wenger & Company Vs their Workmen***, 1963 (6) FLR 303 (SC.CB) the Hon'ble Supreme Court of India held that it is important to bear in mind that the significance or importance of these relevant factors would not be same in each case whether or not the two units constitute one establishment or really two separate and independent unit must be decided on the facts of each case. In ***Rajastan Premkishan Goods Transport Company Vs RPFC***, 1996 SCC (L&S) 1265 (SC2J) The Hon'ble Supreme Court considered whether the findings of the Regional PF Commissioner regarding unity of purpose on each count in as much as the place of business is common, the management is common and the telephone numbers are same and many of the partners are same in the units, can be challenged by the appellant. The Hon'ble Supreme Court also found that the respective employees engaged by the two entities when added together bring the integrated entities within the grip of the Act. The Hon'ble Supreme Court ultimately found that the Regional PF Commissioner is competent to pierce the veil and read

between the lines within the outwardliness of the apparent and find that the clubbing of the establishments are legally valid. In ***LN Gadodia and Sons Vs RPFC*** , 2012 (2) SCC (L&S) 44 the Hon'ble Supreme Court found that when two establishment are run by the same family under a common management with common work force they are due to be treated as branches of one establishment within the meaning of Section 2 A of the Act. Hence both the establishment are liable to be clubbed as one, as if one is the branch of the other for the purpose of coverage under the Act. In this case admittedly both the units, Nirakkoottu Textiles and M/s Nirakkoottu Sarees and Silks is having the common title of "Nirakkoottu" and is owned by husband and wife. It is operating from the same premises and according to the respondent, the attendance registers of the employees are maintained in M/s. Nirakkoottu Textiles which shows that there is managerial and administrative control and common management of the establishments. The learned Counsel for the appellant made a weak attempt to show that Nirakkoottu Sarees and Silks was closed in the year 2007. However the attendance register of Nirakkoottu Sarees ceased by the squad of Enforcement Officers clearly show that there was 6 employees who signed in the attendance register as on

January 2010 and they continued signing the attendance register. Hence the claim of the appellant that M/s Nirakkottu Sarees and Silks was closed in 2007 cannot be accepted. It is clear from the available documents before the respondent authority that the employment strength of the appellant establishment crossed 20 as on January 2010 therefore there is no legal infirmity in the findings of the respondent authority that the appellant establishment is coverable under the provisions of the Act w.e.f January 2010.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer