



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

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

(Friday the 8th day of April, 2022)

Appeal No.218/2019
(Old No.ATA-580(7)2015)

Appellant M/s. Amrut Distilleries Limited
Chullimada,
Pamapampallam (PO)
Palakkad – 678 621

By M/s. Menon & Pai

Respondents 1. The Regional PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi– 682017.

By Adv. Sajeev Kumar K. Gopal

2. M/s. Obak Human Resource
Outsourcing (P) Limited,
3/682 , Karippai Road,
North Kalamassery,
Ernakulam – 683 104

By Adv. C.B. Mukundan

This case coming up for hearing on 16/12/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 08/04/2022.

ORDER

Present appeal is filed from order No. KR/KCH/
24346/ Enf-1(5)/ 2015/RB No. 242-1/745-I dt. 27/04/2015

assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 04/2011 to 07/2012. Total dues assessed is Rs.2, 49, 744/-.

2. The appellant is a company engaged in blending and bottling of different brands of Indian Made Foreign Liquor (IMFL). The establishment is covered under the provisions of the Act. The appellant engaged the 2nd respondent for execution of different works. The 2nd respondent is covered establishment and is remitting contribution in respect of their employees. The Enforcement Officer of the 1st respondent inspected the 2nd respondent organization. In the report dt.10/12/2012 submitted by the Enforcement Officer it was pointed out that the 2nd respondent did not remit contribution on actual wages with regard to the employees deployed by them in the appellant establishment. The 1st respondent issued notice U/s 7A of the Act and the 2nd respondent was directed to produce records. The representative of the appellant pleaded that the 2nd respondent is independently covered and therefore they are liable to remit contribution in respect of the employees deployed by the 2nd respondent in the premises of the appellant. The 2nd respondent appeared before the 1st respondent authority and produced the

records called for. Without considering the pleadings of the appellant as well as the 2nd respondent, the 1st respondent authority issued the impugned order, a copy of which is produced and marked as Annexure A1. As per annexure A1 order, the shortage in payment of contribution is shown against the 2nd respondent and the 1st respondent cannot recover the same from the appellant. The 1st respondent ought not have raised a claim against the appellant in the above proceedings. On a reading of the Sec 2(b), basic wages and Sec 6 regarding contribution and Para 29 of EPF Scheme it is clear that contribution is payable only on basic and DA and no contribution is payable on various allowances paid by the 2nd respondent to its employees.

3. The 1st respondent filed counter denying the above allegations. The 2nd respondent M/s Obak Human Resources Outsourcing Pvt Ltd is an establishment covered with effect from 01/06/2008. The establishment is a contractor engaged in providing manpower to various principal employers. The Enforcement Officer during his inspection pointed out several discrepancies in respect of the employees who were working on contract basis with their clients. The salaries of the employees

were split into various allowances. However of contribution is paid only on basic and DA. Hence it was reported that the 2nd respondent is resorting to huge subterfuge to avoid the remittance of contribution there by committing a fraud on their own employees. The respondent authority initiated an enquiry U/s 7A of the Act against the 2nd respondent and also summoned all the principal employers directing them to produce the relevant records. During the enquiry it was noticed that the appellant was paying wages of Rs. 125/- per day per employee and employers' share of contribution on Rs. 125/- ie., Rs. 17.01. As per the wage register of the 2nd respondent it was seen that the wages are shown as Rs.92/day. The remaining wages are shown as entertainment allowance, washing allowance and conveyance allowance. A representative of the appellant also attended the hearing and submitted that they are paying employers' share of the contribution on full wages and the amount

of Rs.11,26,833.83 was paid to the 2nd respondent for the period 06/2009 to 07/2012, being provident fund contribution and administrative charges. The details provided by the representative of the appellant confirmed the report of the Enforcement Officer that the appellant is reimbursing the

employers' share for the entire wages and the mischief is done by the 2nd respondent and the contribution is restricted to basic and DA excluding the allowances. The respondent authority therefore concluded that Obak Human Resources Outsourcing Pvt. Ltd is fully responsible for remitting the assessed dues in the instant case. The 2nd respondent in fact, made a profit out of the employers share of the contribution on full wages received from the appellant and therefore committed a serious violation of the statutory provisions. As per Sec 2(b) Sec 6 Sec 8A of the Act and Para 30 and 36B of EPF Scheme and also the various decisions of the Hon'ble High Court of Kerala and that of the Hon'ble Supreme Court the employers are liable to remit contribution on all allowances other than those are specifically excluded U/s 2 (b) of the Act.

4. The 2nd respondent filed written statement denying the claim of the appellant as well as of the 1st respondent.

5. The 2nd respondent is only a manpower supply agency. The employees deputed by the 2nd respondent were employed in the premises of the appellant and were under the direct control and supervision of the appellant. As per Sec 6 of the Act and Para 30 of EPF Scheme, the principal employer is responsible for the

provident fund liability of the contract employees engaged by them. The definition of employee as per Sec 2(f) of the Act also include the employees engaged through a contractor. The 2nd respondent used to fix the salary and allowances on the basis of the terms fixed between the principal employer and contractor. Certain allowances are excluded from the basic wages as required by the appellant. A copy of the salary statement along with the ECR relating to the employees is to be provided to the appellant. Appellant never raised any dispute regarding EPF payments. The liability, if any, to remit contribution or additional contribution in respect of the contract employees engaged by the appellant is that of the appellant establishment and the 2nd respondent cannot be held responsible for the same.

6. The appellant establishment engaged employees through the 2nd respondent a manpower supply agency. Both, appellant as well as the 2nd respondent are independently covered under the provisions of the Act. The 2nd respondent is providing man power to various employers. During an inspection by the Enforcement Officer of 1st respondent in the premises of the 2nd respondent, it was seen that the 2nd respondent is resorting to subterfuge in splitting wages of its employees into various

allowances and contribution is being paid on a very small portion of the wages paid by the 2nd respondent. The 1st respondent therefore initiated an enquiry U/s 7A of the Act summoning the contractor, 2nd respondent and also various principal employers. During the enquiry the 1st respondent found that the appellant is paying wages Rs.125/- per employee as per the terms of the 2nd respondent and also paying Rs.17/- as employers' share of contribution to the 2nd respondent . That means the appellant was paying contribution on the full wages paid to the 2nd respondent, with regard to the employees deployed by them to the appellant establishment. The 1st respondent authority also found that the 2nd respondent is showing only Rs. 92 as the basic pay and was only paying contribution on same. The rest of the amounts are shown as entertainment allowance, washing allowance and conveyance allowance and no contribution is paid on those allowances. The 1st respondent authority therefore found that though the appellant was paying contribution on full wages the 2nd respondent was committing the mischief of splitting the wages into various allowances and making a profit out of the provident fund contribution in respect of its own employees received from the appellant establishment. Though the learned Counsel appearing for the 2nd respondent denied the above finding of the 1st

respondent authority he failed to produce any documents to substantiate his claim. The finding by the 1st respondent authority is on the basis of the documents produced before him and also the pleadings by the appellant as well as the 2nd respondent. Taking into account the above facts the 1st respondent authority concluded that “ I take note M/s Obak Human Resources Outsourcing Private Limited befools the employees, Employees Provident Fund Organization and the principal employer and depriving eligible social security benefits to the poor employees for making extra profit for itself. M/s Obak Human Resource Outsourcing Pvt. Ltd in this case is fully responsible for remitting the dues assessed”. It is interesting to note that the 2nd respondent M/s Obak Human Resource Outsourcing Pvt Ltd did not challenge this order. However in this appeal the 2nd respondent unsuccessfully tried to plead that the provident fund contribution made by the 2nd respondent in respect of its employees deployed at the premises of the appellant is as per the direction of the appellant establishment and therefore if there is any default the appellant shall be held responsible for the same. I am not in a position to agree with the pleadings of the learned Counsel for the 2nd respondent in view of the facts explained above.

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, However it is clarified that for the reasons stated in the impugned order as well as in this order, the appellant is not liable to remit the contribution as per the impugned order.

Sd/-

(V. Vijaya Kumar)
Presiding Officer