



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

सत्यमेव जयते

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

(Wednesday the 17th day of March, 2021)

Appeal No. 539/2019

(Old No.ATA-473(7)2010)

Appellant

Diya Cashews
Poothakulam, Edayadi,
Paravoor, Kollam - 691334.

By M/s. Anil Associates

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam- 691 001.

By Adv. Pirappancode V.S. Sudheer

This case coming up for hearing on 17.02.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 17/03/2021.

ORDER

Present appeal is filed from order No. KR / 25187 / Enf- 1 (1) 2009/2257 dt. 30.03.2010 assessing dues in respect of non-enrolled employees U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period 04/2009 to 09/2009. The total dues assessed is Rs.1,26,463/-.

2. Appellant is an establishment engaged in the business of processing of raw cashew. The appellant establishment remitted the contribution regularly. As a seasonal establishment the appellant engaged casual employees for processing during peak season. These employees are paid wages depending on number of days they worked. The services of these employees are not regular. Most of the employees are working in other cashew factories also. Many of the workers are previously employed and enrolled to provident fund and settled their provident fund on attaining the age of 55 years. Hence they are excluded employees. The Enforcement Officer who verified the books of accounts of the appellant establishment has covered the appellant w.e.f 01/04/2009 as the appellant had engaged 31 employees. The coverage notice issued to the appellant establishment is produced and marked as Exbt A2. The Enforcement Officer of the respondent conducted an inspection on 06/10/2009 and prepared a list of employees according to which 89 persons were not enrolled to provident fund. The list prepared by the Enforcement Officer is incomplete since the list do not provide the nature of work or designation and the signature of the employees. The salary, name of the employees and date of joining was also not in any

records maintained by the appellant. A copy of the said list of employees is produced and marked as Exbt A3. On the basis of the list, the Enforcement Officer prepared a part II report proposing to assessing dues in respect of these employees. The inspection report of the Enforcement Officer is produced and marked as Exbt A4. The respondent initiated an enquiry U/s 7A. An authorized representative of the appellant appeared and submitted that the report of the Enforcement Officer is not correct. Ignoring the contentions of the appellant the respondent issued the impugned order. The respondent failed to hear the employees under Para 26 B to decide their eligibility. An Inspector from ESI Corporation visited the appellant establishment on 24/09/2009 and according to his report the appellant was engaging only 31 employees. A copy of the report of the ESI Inspector is produced and marked as Exbt A5. The respondent initiated recovery action as per Exbt A7 even before the expiry of the time for filing the appeal.

3. Respondent filed counter denying the above allegations. The respondent raised a preliminary objection that the appeal is barred by limitation. The impugned order is issued on 30/03/2010 and present appeal is filed on 12/07/2010. As per Rule 7(2) of EPF Appellate Tribunal (Procedure) Rules an appeal

is required to be filed within a period of 60 days. However there is delay in filing the appeal.

4. The appellant establishment is covered under the provision of the Act. The appellant is liable to comply with the provision of Act with regard to all the employees employed by them. The respondent received a complaint regarding non-enrollment. On enquiry through an Enforcement Officer, it was confirmed that 89 employees were not extended the benefits of social security under the Act. Though the establishment was covered w.e.f 04/2009 the appellant also did not start compliance. The Enforcement Officer who conducted the investigation submitted a detailed report with name, age, period of employment and wage of all these employees thereby clearly identifying all the 89 non-enrolled employees. Hence an enquiry was initiated U/s 7A of the Act by issuing summons dt.29/10/2009 for the hearing scheduled on 18/09/2009. Since there was no representation the enquiry was adjourned to 16/12/2009. A representative of the appellant attended the enquiry and sought adjournment which was accept by the respondent authority . The hearing was adjourned to 14/1/2010 and 3/2/2010 since the respondent failed to attend the enquiry. On 03/02/2010 the representative of the appellant

appeared and sought further time to produce the records. The enquiry was adjourned to 25/02/2012 and an authorized representative appeared and stated that the report of the Enforcement Officer was not correct as the same was not based on any records. The appellant failed to produce any documents to disprove the report of the Enforcement Officer and it is found that the report of the Enforcement Officer is complete with the name of the employees, age, period of employment and wages. The appellant never requested for the cross examination of the Enforcement Officer during the course of 7A hearing. As already stated, the identity of the employees are clearly established through the report of the Enforcement Officer.

5. The main issue in this appeal is with regard to non-enrollment of 89 employees by the appellant establishment. The respondent on the basis of a complaint received by him deputed an Enforcement Officer to investigate the complaint. The Enforcement Officer after inspecting the establishment found that the appellant failed to enroll 89 employees. In his report, the Enforcement Officer furnished the name of the employee, age, the duration of their employment and wages received. The appellant failed to comply by enrolling these employees to provident fund. Hence the Enforcement Officer submitted a

report to the appellant as well as the respondent authority informing the non-enrolment of these employees. The respondent authority initiated an enquiry U/s 7A of the Act. The appellant was provided adequate opportunity during the course of 7A. Though the representative of the appellant disputed the wages paid to the employees, they failed to produce any records before the respondent authority inspite of the fact that 5 opportunities were given to them by the respondent authority to substantiate their case. It is seen that the respondent succeeded in prima facia establishing that the appellant failed to enroll 89 employees to prove membership. That being so, it is the responsibility of the appellant to produce their records to substantiate and disprove the claim of the Enforcement Officer of the respondent office. Having failed to do so, the appellant cannot come up in appeal and argue that the assessment is not made properly. The learned Counsel for the appellant also pleaded that there was no proper identification of the employees. According to the learned Counsel for the respondent the 89 employees are clearly identified in the report of the Enforcement Officer. It contains the name of the employees, age, salary paid to them during the relevant period. Hence the claim of the appellant that the 89 non-enrolled employees are not identified

by the respondent has no basis. If the appellant had any case with regard to the wages furnished in the report it was up to the appellant to produce the records and substantiate their claim that the wages as reflected in the report is not the actual wages paid to these employees. It can also be seen from Exbt A3 report of the Enforcement Officer, that the appellant had enrolled 14 employees from 10/2009 and therefore the assessment for the month of 9/2009 made only for 75 employees. Further it is seen that the number of non enrolled employees were 43 during 4/2009 and 5/2009 and 47 during 6/2009, 51 during 7/2009 and 60 during 8/2009. The wages are also seen to be computed on the basis of the number of non-enrolled employees.

6. The learned Counsel for the appellant argued that the appeal is barred by the limitation. It is seen that the impugned order is dt. 30/03/2010 and the appeal is filed on 12/07/2009. According to the learned Counsel for the appellant they received the order on 6/4/2010 and therefore the appeal is within the condonable period of limitation. The appeal was originally filed before EPF Appellate Tribunal New Delhi and vide order dt. 23/08/2010 EPF Appellate Tribunal condoned the delay and admitted the appeal. Hence the claim of the

respondent that the appeal is time barred is not correct and is therefore rejected.

7. EPF Appellate Tribunal vide order dt. 23/08/2010 admitted the appeal on the condition of pre-deposit of 30% of the assessed amount within a period of 2 months. Neither the Counsel for the appellant nor the respondent could confirm the pre-deposit U/s 7(O) of the Act as directed by EPF Appellate Tribunal. If the amount is not deposited as directed by EPF Appellate Tribunal, the appeal is not maintainable and is required to be rejected on that ground alone.

8. However considering the fact, circumstances, pleadings and evidence in this appeal it is not advisable to reject the appeal on the preliminary ground alone. The appeal is also devoid of any merit as discussed above. Hence I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed on merit and also on the ground of non-compliance with direction U/s 7(O) of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer