



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

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

(Tuesday the 3rd day of May, 2022)

Appeal No.111/2019
(Old No.ATA-1043(7)2014)

Appellant

M/s. Tiara Metals
Mayithara P.O
Cherthala ,
Alappuzha - 688359

By Adv. R.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 20/04/2022 and this Industrial Tribunal-cum-Labour Court issued the following order on 03/05/2022.

ORDER

Present appeal is filed from order No. a KR/KCH/15269/Enf-2(1)/2014/5719 dt. 20/08/2014 and order No. KR/KCH/15269/Enf-II(1)/ 2014/5718 dt. 20/08/2014 issued U/s 7A and 7C of EPF & MP Act (hereinafter referred to as

‘the Act’) respectively. The dues assessed are Rs.75,379/- and Rs.1,38,028/- respectively.

2. The appellant is a small engineering unit covered under the provisions of the Act. During the period from 04/2010, contributions were paid on the basis of wages actually paid excluding HRA. Due to financial difficulties the appellant could not remit the contribution in full. The establishment was closed in September 2012. The respondent conducted enquiries U/s 7A & 7C and two orders were issued on 20/08/2014 determining Rs.1,49,241/-towards contribution on assumed wages of Rs.6500/- for all employees for the period from 04/2011 to 12/2011 and 06/2012 to 09/2012 and Rs.2,14,428/- towards omitted wages for the period 04/2010 to 03/2011 and 01/2012 to 05/2012. The assumed wages of Rs. 6500/- is not the actual wages received by the employees including HRA.

3. The respondent raised a preliminary objection that the appellant has filed the present appeal from two orders of the respondent dt. 20/08/2014. As per Rule 10 of EPF Appellate Tribunal (Procedure) Rules 1997 an appeal shall be based on a single cause of action and may seek one or more relief provided

they are consequential to one another. Hence the appeal is not maintainable.

4. The respondent received a complaint filed by the employees stating that they were working with the appellant continuously for more than 18 years and the employer is not making provident fund contribution commensurate with the salary received by them. An Enforcement Officer was directed to investigate the complaint. The Enforcement Officer reported that the appellant is underreporting wages and submitted monthwise omitted wages in respect of 11 employees for the period from 04/2010 to 09/2012. The Enforcement Officer also provided a copy of the inspection report to the appellant with a direction to comply with the provisions. Since the appellant failed to comply an enquiry U/s 7A was initiated for assessing contribution on the omitted wages for the period from 04/2011 to 12/2011 and for the period 06/2012 to 09/2012. Another enquiry U/s 7C of the Act was also initiated for determining the escaped amount for the period 04/2010 to 03/2011 and 01/2012 to 05/2012. The enquiry U/s 7C was initiated for the period 04/2010 to 03/2011 and 01/2012 to 05/2012 considering the fact that the amounts had already been determined U/s 7A of the Act. The enquiry U/s

7A of the Act for the period from 04/2009 to 03/2011 was initiated to determine the dues on HRA as the appellant was remitting contribution on very low wages. The enquiry U/s 7A of the Act for the period 01/2012 to 05/2012 was initiated since the appellant has not remitted any contribution during the period. The definition of basic wages U/s 2(b) of the Act provides for all emoluments earned by an employee other than those specifically excluded components which will form part of basic wages. The contention of the appellant that the amount assessed U/s 7A vide order dt. 04/09/2012 and remitted for the period 01/2012 to 05/2012 and the remittance made for the period 04/2012 to 03/2012 were not accounted, is not correct. The remittance of Rs.7,62,200/- shown in the impugned order is the actual remittance made by the appellant for the above said period. The question whether the demand of statutory liability can be enforced on a closed establishment was considered by the Hon'ble Supreme Court in **ESIC Vs Kalpaka International**, 1993 (2) SCC 9. The Hon'ble Supreme Court held that "The Insurance Court as well as the High Court have correctly upheld the demand for contribution. But it is rather strange to conclude that the demand could not be forced against a closed business. If this finding were to be accepted, it would not promote the Scheme and avoid the mischief. On the

contrary, it would perpetrate the mischief. Any employer can easily avoid his statutory liability and deny the beneficial peace of social security legislation to the employees, by closing down the business before recovery. That certainly is not the intendment of the Act. To hold, as the High Court has done, would set at naught all those beneficial provisions”.

5. The learned Counsel for the respondent raised a preliminary issue that a appeal is not maintainable in view of rule of EPF Appellate Tribunal (Procedure) Rules 1997. As per Rule 10, an appeal shall be based upon a single cause of action and may seek one or more reliefs provided they are consequential to one another. In this case, the appellant has initiated two enquiries one U/s 7A of the Act for assessing the regular dues and another enquiry U/s 7C of the Act to assess dues on evaded wages. The enquiry U/s 7C was initiated because of the assessment of dues for the said period had already been done U/s 7A of the Act. On a perusal of the orders, it is clear that the impugned orders are from different cause of action and there are two separate orders. On a strict interpretation of the provisions, the appeal cannot be maintained. However it is seen that the matter is pending for such a long time and rejecting the

appeal on a technical ground may not be doing justice to the parties, particularly the appellant who is closed in the year 2012.

6. It is seen that no serious dispute is raised with regard to the impugned order issued U/s 7A of the Act for the defaulted period 04/2011 to 11/2012 and 06/2012 to 09/2012 as the assessment is made on the basis of the documents produced by the appellant. I don't find any infirmity in the impugned order assessing dues U/s 7A for the period from 04/2011 to 11/2012 and 6/2012 to 9/2012.

7. The impugned order issued Sec 7C of the Act on evaded wages for the period 04/2010 to 03/2011 and 01/2012 to 05/2012 is absolutely a non-speaking order. It is not clear on what basis the assessment is made. It only speaks about two wage registers being maintained by the appellant and the submission of the representative of the appellant that the bonus of the employees is being paid every month from 04/2011 onwards and hence two registers are maintained. It is not clear whether the assessment of dues for the above period U/s 7C is done on the bonus paid to the employees every month. Bonus is an excluded component of wages and therefore any assessment of dues on bonus cannot be sustained.

Similarly, any assessment of dues on HRA also cannot be sustained, in view of the fact that HRA is an excluded allowance.

8. Considering the facts, circumstances and pleadings in this appeal, the assessment of dues U/s 7A of the Act is upheld and the assessment of dues on evaded wages U/s 7C is not sustainable.

Hence the appeal is partially allowed the impugned order assessing dues U/s 7A of the Act is upheld and the assessment of dues U/s 7C of the Act on evaded wages is not sustainable and therefore the appeal against the said order is allowed.

Sd/~
(V. Vijaya Kumar)
Presiding Officer