



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
( Wednesday the 12th day of May, 2021)

**APPEAL No.272/2018**  
(Old No. A/KL - 49/2017)

Appellant

M/s. Sangi & Company  
Kalyani Complex,  
Bellard Road,  
Kannur – 670 001.

By Adv. R.P. Remesan

Respondent

The Assistant PF Commissioner  
EPFO, Sub-Regional Office  
Fort Road, Kannur – 670 001

By Adv. K.C Santhosh Kumar

This case coming up for final hearing on 24/03/2021 and this Tribunal-cum-Labour Court on 12/05/2021 passed the following:

**O R D E R**

Present appeal is filed from order No. KR/KNR/11026/Enf-1 (2) /7A /2016-17/3905 dt. 01/03/2017 deciding the applicability of the provision of the EPF & MP Act,1952 (hereinafter referred to as

'the Act'.) and assessing the dues for the period 02/2016 to 09/2016 .The total dues assessed is Rs. 2,27,307/-.

2. The appellant is the dealer of consumer products manufactured by 'Godrej'. Till 31/03/2016 the appellant establishment was owned and managed by a different management. The erstwhile management closed their activity w.e.f 31/03/2016 and retrenched their employees giving the entire benefits due to them. Thereafter the appellant purchased the said firm and started the same as a new venture under the same name and style 'Sangi and Co' . The appellant started function from May 2016. The list of goods handed over to the appellant by the erstwhile management is produced and marked as Annexure 1. The total number of employees employed in the month of May 2016 was 7 and the number of employees increased to 13 from October, 2016. Though the appellant is not liable to enroll the employees to the EPF, all the employees were enrolled with effect from October 2016 onwards. Copy of the attendance register for the year from May 2016 to March 2017 is produced and marked as Annexure 2. The respondent issued notice dt. 27/10/2016 alleging that the appellant failed to remit the PF contribution for the period from 02/2016 to 09/2016. The said notice is produced and marked as Annexure 3. The

appellant appeared before the respondent on various dates and produced entire records for verification. The appellant took over the management of firm and started functioning as a new unit. The appellant also engaged some of the employees employed by the erstwhile partnership firm. Two employees by name Mr.E.V.Raju and Shri. T. Prasanthan were also appointed by the appellant. After a few months the appellant disengaged their services. They approached the Respondent and various other departments with tracking of a trade union to compel the appellant to take them back in service. Since the appellant was not interested to take the employees back in service, the respondent authority issued the order directing the appellant to remit the contribution for the period from 02/2016 to 09/2016. The appellant as taken over the management of the appellant establishment only with effect from 31/03/2016 and therefore directing the appellant to remit the contribution from 02/2016 is not legally correct. The appellant has no relationships with the earlier partnership and therefore the appellant cannot be tagged with the liability of the earlier management. The respondent ought to have made enquiries with the earlier management before issuing the impugned order.

3. The respondent filed counter denying the above allegations. The respondent office received a complaint on 25/10/2016 from Kannur Jilla Vaanijya Vyavasaya Masdoor Sangh (BMS) along with the list containing the names of thirteen employees alleging that they were denied PF benefits. Hence a notice U/s 7A of the Act was issued to the appellant to produce the relevant records. The appellant was also given an opportunity for personal hearing on 16/11/2016. One of the partner attended the hearing and informed that no sale deed was executed and the license has not been transferred to his name. Hearing was adjourned to 06/12/2016, 22/12/2016 and 13/01/2017 to provide opportunity to appellant to adduce evidence if any, to substantiate his claim of transfer of management of the appellant establishment. The appellant also did not request for any further adjournment. An Enforcement Officer of the respondent organization was deputed to investigate the complaint filed by the union and the Enforcement Officer in his report dt. 10/07/2016 reported that the management has engaged 13 employees on daily rate basis and no provident fund benefits were extended to the employees. The appellant establishment was covered under the provisions of the Act. The continued applicability of the Act to the establishment is not broken by retrenching all the

employees and reappointing some of them. The appellant failed to produce any document such as sale deed to substantiate their claim that there was a change in management. The appellant also failed to produce a copy of the license issued to the appellant. This will clearly indicate that there is no valid transfer of business by the erstwhile management to the appellant. It is felt that it is a calculated move by the management to minimize the benefits payable to employees. Annexure 3 regarding the handing over of stock will not in any way prove the transfer of management. The appellant failed to produce any document to prove the dissolution of the existing partnership or transfer of her share in the partnership firm to the new partner. If at all there is any transfer, as claimed by the appellant, the same ought to have been proved through some documentary evidence. The contention of the appellant that they appeared on all hearing dates and produced documents for perusal, is denied by the respondent. The appellant attended the hearing on 16/11/2016 but failed to attend the hearing or produce the documents on subsequent hearing held on, 06/12/2016, 22/12/2016, 13/10/2017 and 21/02/2017. Even on 16/11/2016 the appellant failed to produce any relevant document to substantiate their claims but produced only the wage register for the

month of May 2016. In **V Venketesh Vs Union of India**, 1988 (1) LLJ 87P the Hon'ble High Court observed **"there is no provision in the Act which deals with the cessation of its application. When a statute sets out the requirements for its application but not for the cessation of its application, it must be held that once it applies it will continue to apply"**. In **Ernakulam Radio Co. (Calicut) Vs Regional PF Commissioner**, 1974 (KLT) 603 the Hon'ble High Court of Kerala held that **"change in ownership of an establishment does not affect the applicability of the Act to the establishment"**. Sec 1 (5) of the Act clearly lays down that once the Act is made applicable to an establishment, the provisions of the Act will continue to apply even if the employment strength falls below 20 . Even if there is a change in the composition of partners, it will not affect the continued applicability of the provision of the Act to the appellant establishment. Para 26(1) of EPF Scheme provides that every employee employed in or in connection with the work of the establishment to which the scheme applies other than excluded employees shall be entitled and required to become members of the fund.

4. The appellant is disputing the coverage of the appellant establishment with effect from 02/2016 and also the assessment of

dues from 02/2016 to 09/2016. The facts as narrated by the appellant is not at all clear. From the available documents and pleadings it is seen that the appellant establishment was covered under the provision of the Act. According to the learned Counsel for the appellant there was a change in management with effect from 03/2016. No documents to substantiate the claim of change in management with effect from 03/2016 is produced by the appellant. The document relied on by the appellant is Annexure 3 letter dt.18/04/2016 issued by one Mrs. Nalini P.C, Managing Partner of the appellant, enclosing theirwith the list of certain goods, furniture, computer systems etc being handed over to the appellant. It is not possible to assume a transfer of management only on the basis of Annexure 3 document. Hence the respondent authority rightly concluded that the change of management alleged by the appellant is only an excuse to deny the social security benefits to its employees. It is seen that the respondent authority has given the appellant more than adequate opportunity to substantiate their claim before the authority. The appellant failed to avail the opportunities. The claim of the appellant that all the employees were retrenched by giving compensation was also not supported by any evidence. The appellant establishment was covered under the

provision of the Act and therefore they continued to be cover unless there is specific evidence to prove that the appellant establishment is completely closed and the appellant started a new business which is not coverable under the provision of the Act since the employment strength is below the statutory limit of 20. From the available records in this case, it is seen the appellant establishment is a covered establishment under the provision of the Act and defaulted in contribution for the period from 02/2016 to 09/2016 and the same was assessed by the respondent authority. In the absence of any other record to prove the change of management it is not possible to accept the claim of the appellant. The learned Counsel for the appellant argued that only because some of the erstwhile employees were taken by the new management, it is not possible to claim continued applicability of the Act. In this case except for the claim of the appellant that there is a change of management, there is absolutely no evidence that there is any change in the management warranting the discontinuation of the application of the provisions of the Act. Even though it is not proved, the claim of the appellant that the earlier workers were retrench by the management is not disputed by the respondent. Even assuming that there is a genuine retrenchment of the employee it will not in any



way affect the continued applicability of the provisions of the Act to the appellant establishment. As admitted by the appellant they have already started compliance with effect from October 2016 under the same code number and under the same name. This further supports the fact that the appellant is liable to remit contribution for the period from 02/2016 to 09/2016 as well. Since there is no dispute regarding the quantum of dues assessed by the respondent authority as per the impugned order, I don't find any reason to interfere with the impugned order.

5. Considering all the facts circumstances and pleadings, I am not inclined to interfere with the impugned order .

Hence the appeal is dismissed.

(Sd/-)

**(V. Vijaya Kumar)**  
Presiding Officer