



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

सत्यमेव जयते

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

(Monday the 26<sup>th</sup> day of October, 2020)

**Appeal No. 350/2019**

(Old No. ATA No. 764(7) 2015)

Appellant : M/s. Eastern Retreads Pvt. Ltd  
Vazhakkulam Post,  
Muvattupuzha,  
Ernakulam,Kerala- 686 670.

By Adv. C.B. Mukundan  
Adv. Biju P. Raman

Respondent : The Assistant PF Commissioner  
EPFO, Kaloor  
Kochi – 682 017

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 09/10/2020  
and this Tribunal-cum-Labour Court on 26/10/2020  
passed the following:

**ORDER**

Present appeal is filed from order No. KR/KC/15297/  
ENF-3(2)/2015/109 dt.07/04/2015 assessing the dues  
U/s 7A of EPF & MP Act, 1952 ( hereinafter referred to as

'the Act') for the period from 02/2013 to 12/2013. The total dues assessed is Rs. 43,766/-

2. The appellant is a Private Limited Company engaged in the business of retreading tyres. The appellant was regular in compliance. An Enforcement Officer of the respondent inspected the records of appellant establishment and submitted inspection report dt. 06/02/2014. The respondent, on the basis of the inspection report submitted by the Enforcement Officer, initiated an enquiry of U/s 7A of the Act. The appellant appeared before the respondent along with all relevant records. From the records produced by them, it was clear that the appellant was paying Provident Fund contribution on basic wages and dearness allowance. The appellant remitted the contribution in accordance with Sec.6 of EPF Act. Conveyance allowance was paid to the employees as reimbursement of actual expenses. The allowance was not paid as per terms of contract. Ignoring the contentions of the appellant the respondent issued impugned order. The appellant has not revealed the name of employees to whom the benefit is payable. The respondent also has not furnished a copy of the inspection report on the basis of

which the enquiry was initiated. The respondent has wrongly taken a view that according to Sec.2b of EPF & MP Act, basic wages is defined to include all emoluments except those which are specifically excluded. The respondent included all allowance such as dearness allowance, house rent allowance, special allowance and conveyance allowance paid to the employees for the purpose of computing provident fund dues.

3. The respondent filed counter denying the above allegation. The appellant is covered under the provision of the Act w.e.f 01/04/1999. During the course of inspection on 06/02/2014 the Enforcement Officer noticed that the compliance position of the appellant establishment is not satisfactory and there was under reporting of wages for calculating Provident Fund dues. The appellant was remitting Provident Fund contribution only on a small portion of the total emoluments earned by the employees. The wages earned by the employees was split into various components such as basic, dearness allowance, house rent allowance, special allowance & conveyance allowance. The appellant remitted Provident Fund contribution only on basic pay and excluded all other allowance for the purpose

of calculation of PF dues. The appellant was therefore summonsed U/s 7A of the Act and was directed to appear before the respondent on 27/11/2014. A representative of the appellant finally appeared on 03/03/2015 and submitted a representation and also difference in calculation in respect of 13 employees. Provident Fund was remitted on actual wages paid, but the Enforcement Officer has taken dues on Rs. 6500/- and that normally happen since these employees were not employed for the whole month. The respondent came to the conclusion that the basic wage defined U/s. 2(b) of the Act includes every elements universally paid to the employees in the normal course of employment. The EPF dues were determined on gross salary limiting to the salary limit of Rs.6500/- on the strength of records produced in the enquiry.

4. It is seen that the respondent has initiated action against the appellant on the basis of an inspection report submitted by the Enforcement Officer after his inspection of the appellant establishment on 06/02/2014. Though the learned Counsel for the appellant argued that a copy of the report was not provided to him, he has referred to the report while filing this appeal. The learned

Counsel for the respondent denied the allegation and pointed out that a copy of the inspection report was given to the appellant by the Enforcement Officer, immediately after the inspection. The issue involved is whether the allowances paid by the appellant establishment to its employees will attract the PF deduction. From the impugned order, it is seen that the salary of the employees of the appellant establishment is split into basic, dearness allowance, house rent allowance, special allowance and conveyance allowance. The respondent has taken the gross pay for assessing provident fund dues. As per section 2(b) of the Act “ basic wages ” is defined as ;

“ All emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him but does not include

- (i) Any cash value of food concession .
- (ii) Any dearness allowance, house rent allowance, overtime allowance, bonus, commission or any similar allowance payable to the employee in

respect of his employment or work done  
such employment.

(iii) Any present made by the employer.

Sec.6 of the Act provides for the contribution payable under the Act according to which contribution is required to be paid on basic wages, dearness allowance and retaining allowance. The exclusion of certain allowance in Sec 2(b) and inclusion of some of those allowance in Sec.6 has lead to some conflict in the implementation of the provisions. The Hon'ble Supreme Court considered the conflict in detail and resolved the two rival contentions in **Bridge & Roof Company (India), Ltd., Vs Union of India**, 1963 AIR (SC) 1474 and held that ,

- 1) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
- 2) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

The law laid down above is later confirmed by the Hon'ble Supreme Court in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428 and **Kichha Sugar Company Ltd Vs. Tarai Chhini Mill Mazdoor Union of India** , 2014 (4) SCC 37. In a recent decision in **RPFC Vs Vivekananda Vidyamandir**, 2019 KHC 6257 the Hon'ble Supreme Court of India again considered whether variable dearness allowance, travelling allowance, canteen allowance lunch incentive, special allowance etc would form part of basic wages. The Hon'ble Supreme Court of India refused interfere with the finding of the High Court that the above allowance will form part of basic wages. The Hon'ble High Court of Kerala in **RPFC Vs. Cosmopolitan Hospitals (P) Ltd** held that special allowances answers the definition of basic wages, in which case, contribution is required to be paid on the same. In **Kitex Garments Vs RPFC**, WP(C) 12265/ 2017 the Hon'ble High Court of Kerala held that general allowance/special allowance will form part of basic wages.

5. The learned Counsel for appellant pointed out that even HRA which is specifically excluded U/s 2(b) of the Act is also included for the purpose of assessment. On a perusal of the impugned order, it is seen that the respondent has taken the gross pay for the purpose of assessment on the ground that it is universally paid to all the employees. The respondent relied on the decision of Gujarat High Court **in M/s. Cypromet Limited Vs APFC**, 2004 (2) GLR 529 to arrive at the conclusion that all allowances in this case will form part of basic wages. However it is seen that the Hon'ble High Court of Gujarat has specifically excluded HRA from the assessment of PF dues.

6. Considering all the facts, circumstances, and pleadings in this case, I am of the considered view that all allowances given by the appellant to its employees except HRA will form part of basic wages and will attract PF deduction. HRA will not attracts deduction in view of this specific exclusion U/s 2(b) of the Act.



Hence the appeal is partially allowed and the impugned order is set aside and the matter is remitted back to the respondent to re-asses the dues after excluding HRA component of the wages from impugned order within a period of three months after issuing notice to the appellant. The amount remitted by the appellant U/s 7(O) of the Act shall be adjusted after finalization of the enquiry.

Sd/-

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