सत्यमेव जयते

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

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

(Tuesday the 15th day of February, 2022)

Appeal No.387/2018
(Old No. ATA 422(7) 2014)

Appellant : M/s. Kwality Containers,
Kuttur P.O ,
Thrissur – 680 013.

M/s. Menon & Pai

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

By Adv.Thomas Mathew Nellimmoottil

This case coming up for final hearing on 09/07/2021 and this Tribunal-cum-Labour Court on 15/02/2022 passed the following:

O R D E R

Present appeal is filed from order No. KR/ KC/24228/Enf-II(2)/2014/18907 dt.25/03/2014 issued U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 05/2005 to 11/2007. The total dues assessed is Rs.2,96,364/-.

2. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer of the respondent conducted an inspection and verified the records of the appellant establishment and submitted a report. The respondent initiated an enquiry U/s 7A of the Act. True copy of the notice dt.02/01/2014 is produced and marked as Annexure A. A representative of the appellant appeared before the respondent authority and filed a reply dt. 09/10/2013 explaining that the appellant establishment had only 19 employees during the period from 05/2005 to 11/2007. The employment strength reached 20 in the year 2007 and the appellant establishment

started compliance from that date. The appellant also explained that there was one trainee and he was only a learner and he was not employed by the appellant establishment. The appellant further explained that including the sweeper the appellant had only 19 employees. There were only 19 employees till 14/11/2007. Without considering the pleadings of the appellant the respondent authority pre-poned the coverage to 05/2005 and assessed the dues from 05/2005 to 10/2007. It is not fair on the part of the respondent authority to pre-pone the coverage after 8 years that too by adding a trainee who was not employed for wages. The respondent ought to have accepted the explanation given by the appellant that the sweeping allowance was paid to the sweeper who was already one among the 19 employees included in the register. Respondent ought to have considered that the so called trainee was only there for a few months and left in the year 2005 itself.

3. The respondent filed counter denying the above allegations. The appellant establishment started working from 06/10/1993 and was covered under the provisions of the Act w.e.f 15/11/2007. An Enforcement Officer who conducted the inspection of the appellant establishment in his report dt. 24/03/2011 reported that as per the books of accounts for the period 2004-2005 & 2005-2006, an amount of Rs.30,420/- and Rs. 61,455/- are seen paid to a person on, on the job training. From the ledger it was seen that the trainee was engaged w.e.f 01/05/2005. Since the trainee was not appointed on the basis standing orders of the appellant establishment or under Apprentices Act, the trainee will come within the definition of employee and therefore the employment strength reached 20 on 02/05/2005. On the basis of the report of Enforcement Officer an enquiry was initiated U/s 7A of the Act. A summons dt.24/10/2013 was issued, fixing the enquiry on 27/11/2013. A representative of the appellant attended the hearing and submitted that the establishment engaged a trainee from

05/2005 and he was receiving stipend and not salary. Though the regular employees were receiving a salary in the range of Rs.1250/- to Rs.3200/- the trainee was receiving remuneration around Rs.5000 to 5400/- per month. Further it is seen from the balance sheet for 2005 -2006, 2006-2007 and 2007-2008 that the appellant is paying sweeping charges. Taking into account all the employees engaged by the appellant, the employment strength crossed 20 in May 2005 itself. As per Sec 1 (3) (a) of the Act, any establishment employing 20 or more persons will be covered under the provisions of the Act the day the employment strength reaches 20. From the documents of the establishment, it is proved beyond any doubt that the employment strength crossed 20 on 02/05/2005. As per Sec 2(f) of the Act, any person engaged in or connection with the work of the establishment and who gets its wages directly or indirectly from the employer excluding apprentices engaged under Apprentices Act, 1961 or under the certified standing orders of the establishment is an employee. Further Para 26 of

the EPF Scheme mandates that every employee employed in connection with the work of the factory or establishment to which EPF Scheme applies other than the excluded employees shall be entitled and required to become member of provident fund from the date of joining the said establishment . In the instant case the trainee engaged by the appellant is an employee since they are employed for the work of the establishment and not as per Apprentices Act, 1961 or as per the Standing Orders of appellant establishment. The appellant failed to produce the balance sheet and ledgers at the time of original coverage of appellant establishment and their declaration that the employment strength crossed 20 only in November 2007 was accepted by the respondent authority.

4. The appellant establishment is covered under the provisions of the Act w.e.f 15/11/2007, on the declaration of the appellant that the employment strength of the appellant establishment reached 20 only in 11/2007. However during the

inspection of the appellant establishment by an Enforcement Officer of the respondent's Office it was noticed that the appellant was engaging a trainee from May 2005 and the appellant establishment was also paying sweeping charges. On the basis of information placed before him, the respondent authority concluded that the employment strength of the appellant crossed 20 in May 2005. The learned Counsel for the appellant contented that the trainee engaged by the appellant was not an employee and therefore cannot be taken for the purpose of coverage of the appellant establishment. The learned Counsel for the appellant also stated that sweeping charges are paid to one of the regular employees for doing the extra work and no additional employee was engaged for the purpose. The learned Counsel for the respondent argued that the trainee will not come in the excluded category as he is not engaged under Apprentices Act 1961 or under Standing Orders of the appellant establishment. The learned Counsel for the appellant argued that even though the appellant establishment is not having a certified

Standing Orders Model Standing Orders are applicable to the appellant establishment. I am not in position accept the pleadings of the learned Counsel for the appellant, Sec 12(A) of Industrial Establishment Standing Orders Act can be invoked only after the establishment start the process U/s 3(a) of the said Act for getting the Standing Orders certified. The appellant has no case that they have started the process for certification of the Standing Orders and therefore the appellant cannot invoke the Model Standing Order U/s 12 (A) of the Industrial establishment Standing Orders Act. Since the so called trainee is not engaged as per the Apprentices Act or under the Standing Orders of the appellant establishment, the appellant establishment cannot claim any exclusion for the trainee engaged by them. Sec 2(f) of the Act is very clear to the effect that employees includes any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act 1961 or under the Standing Orders of the establishment. The learned Counsel for the respondent also pointed out that when

the regular employees are paid salary in the range of Rs.1250/- to Rs.3200/-. The trainee is paid a remuneration of Rs. 5000/- to 6000/-. Considering all these facts, it is difficult to accept the pleadings of the learned Counsel for the appellant that the trainee cannot be treated as an employee for the purpose of the coverage of the appellant establishment .

5. The learned Counsel for the appellant pointed out that the sweeping charges are paid to one of its existing employees and no additional employee is engaged for the said purpose. Without further enquiring into the issue to identify the employee, to whom the sweeping charges are paid and also without confirming the claim of the appellant that sweeping charges are paid to one of its existing employees, the respondent authority proceeded to decide that a sweeper is also engaged in addition to the 19 regular employees and a trainee. The decision of the respondent authority is not supported by any evidence particularly in view of the stand taken by the appellant that the

sweeping charges are being paid to one of its existing employees. Hence it is not correct on the part of the respondent authority to assume that a sweeper is engaged by the appellant and counting one more employee for the purpose of coverage and also quantifying the dues on sweeping charges.

6. As already pointed out the employment strength of the appellant establishment reached 20 in May 2005 and therefore the preponement of coverage from 11/2007 to 05/2005 is in order. However taking an additional employee on the ground that the appellant establishment is paying sweeping charges and assessing the dues on the sweeping charges cannot be sustained.

7. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that the preponement of coverage to 05/2005 and the assessment of dues from that period is legally correct. However the assessment of dues in respect of sweeping charges paid by the appellant establishment cannot be accepted.

Hence the appeal is partially allowed holding that the assessment of dues on sweeping is not legally sustainable. However the preponement of coverage to 05/2005 and assessment of dues in respect of regular employees and the trainee is upheld.

Sd/-

(V. Vijaya Kumar)
Presiding Officer