सत्यमेव जयते

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

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

(Friday the 20th day of May, 2022)

APPEAL Nos.451/2018 & 452/2018
(Old Nos. 146(7)/2011 & 145(7)/2011)

Appellant in Appeal No. 451/2018 : N.B Krishnakurup
(Managing Partner)
M/s. N.B.Krishna Kurup
1/2973, " Gayathri"
Manjunatha Rao Road
East Hill, Kozhikode – 673 005

Appellant in Appeal No. 452/2018 : N.B Krishnakurup
(Managing Partner)
M/s. N.B.K. Catering Service
1/2973, " Gayathri"
Manjunatha Rao Road
East Hill, Kozhikode– 673 005

By Adv. K.P. Rajagopal

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006.

By Adv.(Dr.)Abraham P.Meachinkara

ORDER

Final orders in the above appeals was issued on 13/09/2021. It is pointed by the appellant, that name of one of the appellant is not included in the order. Hence the name of the appellant in Appeal No.451/2018 is incorporated in the order U/s 7L(2) of the EPF & MP Act 1952. Since there is no other change in the order, notice is not issued to the parties.

Present appeals are filed from Order Nos . KR/ KK/ 5312 & KR/ KK/11423/Enf -1 (2)/ 2011/4480 dt. 17/01/2011 directing the appellants to remit contribution @ 12% U/s 7A of EPF & MP Act (hereinafter referred to 'the Act') for the period from 09/1997 to 02/2009. The total dues assessed is Rs.3,79,060/-.

2. Since common issues are raised, both the appeals are heard together and disposed of by a common order.

3. The appellant is engaged in the catering business. The appellant establishments are covered under the provisions of the Act. The appellant remitted contribution @ 10% w.e.f 22/09/1997 as the employment strength was below 20. The appellant establishments are separate and maintaining separate books of

accounts and also license from railways. The respondent authority initiated action U/s 7A of the Act to decide the rate of contribution payable by the appellants. The appellant entered and contested the matter. The respondent authority without considering the representations made by the appellants directed that the Catering Service at Calicut and Palakkad junction are part and parcel of the same establishment and since the combined employment strength was beyond 20, the appellants are liable to remit contribution at the enhanced rate of 12% w.e.f 22/09/1997.

4. Respondent filed counter denying the above allegations. The appellant in Appeal No.451/2018 is covered under the provisions of the Act w.e.f 31/10/1981 and code number KR /KK / 5312 was issued to be established. M/s NBK Catering Service Calicut is covered as the employment strength of the appellant crossed 20 including all its branches at Chalakkudy and Palakkad. None of the units were independently coverable as the employment strength was below the statutory limit. The appellant never disputed coverage and continued compliance. The appellant complied for all the branch units in the code number up to 31/03/1988. The appellant sought a separate code number for the catering service at

Palakkad junction w.e.f 01/04/1988. Accordingly a separate code number, KR/KK/11423 was allotted to the catering service at Palakkad junction w.e.f 01/04/1988 for administrative convenience. Copy of the communication dt. 01/06/1988 allotting separate code number is produced and marked as Exbt R1(a). Exbt R1(a) clearly specifies that allotment of separate code number to the catering service at Palakkad junction is only for administrative convenience. The rate of statutory contribution was enhanced from 10% to 12% w.e.f 22/09/1997 in respect of establishments employing 20 employees. The appellant establishments continued remitting contribution @ 10% irrespective of the fact that the combined employment strength of the appellants was more than 20. The employment strength of the appellant establishments were 10 at Calicut, 2 at Chalakkudy and 8 employees at Palakkad junction and the appellant establishments remitted contribution in code number KR/KK/5312 w.e.f 31/10/1981 to 31/03/1988. During the enquiry the appellant raised an issue that M/s. N.B Catering Services and M/s. N.B. Krishna Kurup are independent establishments and combined employment strength cannot be considered for deciding the percentage of contribution payable by

the employees. It is admitted by the appellant that the establishments were run as M/s NBK Catering Services till 31/03/1988 and there is a change in management from 01/04/1988 for the catering service at Palakkad junction. The appellant did not dispute the coverage though the combined strength of all the three branches were taken for applying the provisions of the Act. The appellant paid contribution @ 12% from 10/1997 to 03/1998 and from 04/1998 onwards they started contributing @ 10% duly adjusting the 2% contribution earlier paid towards future dues. The claim of the appellants that they were not given adequate opportunity for hearing is not correct. Opportunities for hearing was given on 06/05/2009, 03/06/2009, 07/07/2009 28/07/2009, 23/11/2009 and 21/12/2010. The appellant participated in the enquiry and produced partnership deed of M/s. NBK catering service executed on 01/04/1988 and that of M/s Krishna Kurup dt. 13/9/1996. On a verification of partnership deed dt. 01/04/1988 and 30/09/1996 would show that the real ownership vests with Sri. N.B Krishna Kurup who is the appellant in both these appeals. Copies of partnership deeds dt.01/04/1988 is produced and

marked as Exbt R1(b) and the partnership dt. 13/09/1996 is produced and marked as Exbt R1(c). Ebts R1(b) & R1(c) would clearly show that there is no finance from new partners but it was executed only for assisting Shri. N.B Krishna Kurup on working partnership basis. The new partners are none other than the wife and son of Shri. N.B.Krishna Kurup. The letter dt. 14/05/1998 submitted by the appellant before the Regional PF Commissioner Kozhikode would prove that both these units are run by Shri. N.B.Krishna Kurup only. A copy of the letter dt. 14/05/1998 is produced and marked as Exbt R1(d).

5. The issue involved in this appeal is whether the appellants are liable to remit contribution at the enhanced rate. The appellants in both these appeals are one Mr. N.B Krishna Kurup who is the Managing Partner of the catering establishments M/s Krishna Kurup, Palakkad and M/s NBK catering services, Calicut. The appellant was running railway catering service at Calicut, Chalakkudy and Palakkad Junction. The respondent organization covered the appellant establishments under the provisions of the Act when the combined strength of all the branches at Chalakkudy, Calicut and Palakkad junction reached 20 and code number KR/

KK/ 5312 was allotted to the establishment w.e.f. 31/10/1981. There was no dispute regarding coverage. The appellants continued compliance under the code number from 01/11/1981 to 01/04/1988. In the year 1988 the appellant requested for allotment a separate code number for the catering service at Palakkad junction and the respondent issued a separate code number KR/11423 w.e.f 01/04/1988 for administrative convenience U/s 2A of the Act. On 22/09/1997 Government of India revised the rate of contribution from 10 to 12 % for establishments employing more than 20 persons. The appellant initially contributed @ 12 % for the period from 10/1997 to 03/1998. However from 04/1998 onwards the appellants reduced the contribution to 10% and also adjusted the 2% contribution earlier paid against subsequent dues. The respondent therefore initiated an enquiry U/s 7A to decide whether the appellants are liable to remit contribution at the higher rate of 12%. The respondent authority after considering the documents placed by the appellants in the enquiry came to the conclusion that the appellants are liable to contribute at a higher rate of 12%.

6. According to the learned Counsel for the appellants the appellant establishments are independent establishment and the documents produced, such as, trading and profit and loss account, balance sheet, income tax returns, correspondence with railways and licenses would clearly prove that the appellant establishments are independent and they cannot be clubbed for the purpose of arriving at the total employment strength. If the appellant establishments are taken independently the employment strength of each unit is below 20 and therefore they are liable to pay contribution only at the rate of 10%. The learned Counsel for the appellant also submitted that the railways allotted the license for starting vegetarian refreshment room for Palakkad in the year 1988. The unit was registered in the name and style of M/s Krishna Kurup. As per the provisions contained in the catering policy of railway an individual or a firm can be awarded license for any number of catering units and each units will be under separate license and the same cannot be clubbed with other contract awarded in other locations. The learned Counsel for the appellant also submitted that a vegetarian refreshment rooms at Chalakkudy and Calicut are separate units and separate license are issued by the

Indian railway and also run by separate partners. The learned Counsel for the appellant relied on various decisions to argue that the unit at Calicut and Palakkad cannot be clubbed for the purpose of arriving at the total employment strength. In **Evan Food Corporation Vs Union of India,** 1994 KHC 523 the Hon'ble High Court of Kerala held that the question of unity of two establishments must be decided on the test of its total functional unity. In **George Sons and Company Vs EPF Appellate Tribunal,** 2015(2) KHC 464 the Hon'ble High Court of Kerala held that while considering the issue of inclusion of all departments and branches, intention of legislature was aimed to protect the welfare of employees. However every employer is within his rights to arrange his affairs in such a manner so as to take each establishment outside the coverage. The learned Counsel for the appellant also relied on the decisions of the Hon'ble Supreme Court in **Regional PF Commissioner Vs Raj Continental Exports Pvt. Ltd.,** 2007 KHC 3879 wherein the Hon'ble Supreme Court relying on another decision in **Regional PF Commissioner Vs Dharamsi Morarji Chemical Company Ltd.,** 1998 (2) SCC 446 held that in the absence of evidence of common supervisory, financial or managerial control

between 2 units and only because of common ownership a unit cannot be held to be a part and parcel of another unit. The learned Counsel further relied on **Central Board of Trustees EPFO Vs M/s. Krishnan Nair and Sons Jewellers and Another**, 2017 (5) KHC 574 and also **Regional PF Commissioner Vs K.K Bhanumathi and Others**, 2016 (3) KHC 80 on the question of clubbing of the 2 units. The question is whether the dictums laid down by the Hon'ble High Court as well as Supreme Court is relevant to the facts of the present case. It is a settled position that the issue regarding clubbing shall be decided on the facts and circumstances of each case. As already stated, the appellant establishments run by the appellant at Calicut, Chalakkudy and Palakkad where clubbed and covered under the provisions of the Act w.e.f 31/10/1981, since the combined employment strength of the appellant establishment touched 20 employees. The Calicut catering service was employing 10 employees, the Chalakkudy unit was employing 2 and the Palakkad junction unit was employing 8 as on 31/10/1981. The appellant raised no dispute regarding the coverage. The appellant continued compliance under the code number KR/KK/5312 allotted to the appellant till 31/03/1988. In 1988 the appellant

sought an independent code number for the Palakkad unit and the respondent authority issued an order specifying that the allotment of separate code number is only for administrative convenience. From 22/09/1997 Government of India increased the rate of contribution from 10% to 12%. Initially the appellant remitted contribution at a higher rate but subsequently reduced rate of contribution to 10%. Initially the respondent authority failed to notice the mistake but subsequently issued notice to the appellant directing them to remit contribution @12%. By that time all the units at Chalakkudy, Calicut and Palakkad junction were closed. The Chalakkudy unit was closed in 1987 and the unit at Palakkad junction was closed w.e.f 31/01/2009 and the unit at Calicut railway station was closed w.e.f 28/02/2009. The employees left the service of the appellant establishments and their accounts are also settled. In this background of facts the issue is whether the appellant establishments can dispute the coverage clubbing the units from 1981 in the year 2011. I am of the considered view that the dictums laid down by various courts is not applicable to the facts of this case. In all the judgments cited by the learned Counsel for the appellant the clubbing of units was challenged at the

threshold level itself, either disputing the coverage or disputing the applicability itself. In this case the appellants themselves complied with the provisions of the Act from 1981 till 1988 under a common code number and thereafter requested for a separate code number and the same was allotted for administrative conveyance by the respondent organization. Further as rightly pointed out by the learned Counsel for the respondent, the new partnership created is only between father, mother and son and the appellant in these cases is the Managing Partner and the other partners had no financial commitment in these partnerships. Hence the issue whether the railway catering policy insist for such separate arrangement is not at all relevant while considering the social security benefits to its employees. Hence it is clear that the appellant is liable to contribute @ 12% w.e.f 22/09/1997.

7. Having found that the appellants are liable to contribute at the higher rate, the issue is whether the respondent will be in a position to pay the said amount to the concerned employees. The learned Counsel for the respondent submitted that the employees are identifiable as they were members of provident fund and took their settlement from the organization. It is doubtful whether the

respondent will be in a position to reach all the ex-employees and extend the benefits to them. It is seen that the appellants remitted an amount of Rs. 94,765 being 25 % of assessed dues as per the direction of the Hon'ble High Court of Kerala. Ideally the respondent shall identify the employees and disburse the above amount to those identified employees and only after exhausting the amount deposited by the appellant, the respondent shall initiate action for recovery of the outstanding dues.

8. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned orders.

Hence the appeals are dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer