



सत्यमेव जयते

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

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

(Friday the 12th day of November, 2021)

Appeal No.564/2019
(Old No. ATA 883(7) 2012)

Appellant : M/s. Kwaliti Packaging,
Kanjani ,
Thrissur – 680 612.

M/s. Menon & Pai

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

By Adv.Thomas Mathew Nellimmootil

This case coming up for final hearing on 09/07/2021
and this Tribunal-cum-Labour Court on 12/11/2021 passed the
following:

ORDER

Present appeal is filed from order No. KR/KC/21831/
Enf-II (6) / 2012 / 7557 dt. 04/09/2012 issued U/s 7A of EPF &

MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 07/2009 to 01/2012. The total dues assessed is Rs.1,86,483/-.

2. Appellant is an establishment covered under the provisions of the Act. An Enforcement Officer of the appellant inspected the records of the appellant and submitted a report. The respondent authority issued a notice U/s 7A of the Act. The representative of the appellant attended the hearing, explained the allowances and also informed that the allowances will not form part of basic wages. Ignoring the above contentions the respondent authority issued impugned order. The respondent authority issued the impugned order in violation of Sec 6(2)(b) and Para 29 of EPF Scheme. These provisions support the contention of the appellant that contribution is payable only on basic wages and dearness allowance.

3. Respondent filed counter denying the above allegations. The Enforcement Officer during his inspection

found that the appellant establishment is paying contribution only on a fraction of the wages paid to its employees. According to him, wages were split up as basic, DA, HRA, travelling allowance, refreshment allowance and washing allowance, and PF contribution was being remitted only on Basic + DA. To ascertain the extent of evasion the appellant was summoned U/s 7A of the Act. Representative of the appellant attended the hearing. A copy of the report of the Enforcement Officer was provided to the representative to facilitate the appellant to respond to the report of the Enforcement Officer. The enquiry was adjourned to 24/07/2012. A representative of the appellant attended on 24/07/2012 and argued that house rent allowance, travelling allowance, washing allowance etc, do not come under the definition of basic wages. The respondent authority considered all the arguments and issued the impugned order. The Hon'ble High Court of Gujarat in **Cympromet Ltd Vs Assistant PF Commissioner**, 2004 (103) FLR 908 held that the term basic

wages as defined under Sec 2(b) includes all emoluments /benefits received by the employees under the headings of medical allowance, conveyance allowance and lunch allowance and therefore all these allowances will have to be considered for the purpose of calculating provident fund.

4. An Enforcement Officer who conducted the inspection of the appellant establishment found that the appellant establishment is splitting up the wages of employees into various allowances such as travelling allowance, refreshment allowance, washing allowance, house rent allowance etc, to evade provident fund contribution. The respondent therefore initiated an enquiry U/s 7A of the Act to decide the extent of evasion by the appellant and issued the impugned order. According to the learned Counsel for the appellant the allowances such as travelling allowances, refreshment allowances, washing allowances and house rent allowances are excluded from the provisions of the Act. According to the learned Counsel for the respondent,

allowances such as travelling allowances and refreshment allowances will form part of basic wages and the appellant is required to remit contribution on the same. In **Rajasthan Prem Kishan Goods Transport Co. Vs RPFC and Other**, 1996 (9) SCC 454 the Hon'ble Supreme Court held that it is upto the Commissioner to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of pay has been, made only as a subterfuge to avoid its contribution to provident fund. In this case, therefore, the respondent authority examined whether the allowances discussed above will form part of basic wages and therefore will attract provident fund deduction. After discussing the relevant facts and also the legal provisions, the respondent authority came to the conclusion that travelling allowance and refreshment allowance will form part of basic wages and therefore will attract provident fund deduction. Allowances such as HRA which are specifically excluded from the

definition of basic wages are not taken into account for the purpose of assessment of dues.

5. In the above context it is relevant to examine statutory as well as the legal position with regard to the allowances which will form part of basic wages.

Sec 2 (b) of the Act defines the basic wages and Sec 6 of the Act provides for the contribution to be paid under the Schemes:

Section 2(b) : “basic wages” means all emoluments which are earned by an employee while on duty or (on leave or 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 :

1. cash value of any food concession.
2. Any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an

employee on account of a rise in the cost of living) HRA, overtime allowance, bonus, commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment.

3. Any present made by the employer.

Section 6: Contributions and matters which may be provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages,

Dearness Allowance, and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishment which the Central Government, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted.

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding of such fraction to the nearest rupee half of a rupee, or quarter of a rupee.

Explanation 1 – For the purpose of this section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

6. It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country. The Hon'ble Supreme Court of India in **Bridge & Roof Company Ltd Vs Union of India** , 1963 (3) SCR 978 considered the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages.

The Hon'ble Supreme Court of India ratified the above position in **Manipal Academy of Higher Education Vs PF Commission**, 2008(5)SCC 428. The above tests was against reiterated by the Hon'ble Supreme Court in **Kichha Sugar Company Limited Vs. Tarai Chini Mill Majzoor Union** 2014 (4) SCC 37. The Hon'ble Supreme Court of India examined all the above cases in **RPFC Vs Vivekananda Vidya Mandir and Others**, 2019 KHC 6257. In this case the Hon'ble Supreme Court considered whether travelling allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these cases the Hon'ble Supreme Court held that “ the wage structure

and the components of salary have been examined on facts, both by the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflage as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference.” The Hon’ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of **EPF Organization Vs MS Raven Beck Solutions (India) Ltd**, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon’ble Supreme Court to conclude that

“ this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, forms an integral part of basic wages and as such the amount paid by way of these allowance to the employees by the respondent establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent establishment by classifying it as payable for uniform allowance,

washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of provident fund contribution by the respondent establishment”.

7. From the above discussion, it is clear that the appellant is liable to pay contribution on allowances such washing allowance, other allowances etc. In **Montage Enterprises Pvt Ltd Vs EPFO**, 2011 LLR 867 (MP.DB) the Division Bench of the Hon’ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In **RPFC West Bengal Vs. Vivekananda Vidya Mandir**, 2005 LLR 399(Calcutta DB) the Division Bench of the Hon’ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages . This

decision of the Hon'ble High Court of Calcutta was later approved by the Hon'ble Supreme Court in **RPFC Vs Vivekananda Vidya Mandir** (supra). In **Mangalore Ganesh Beedi Workers Vs APFC**, 2002 LIC 1578 (Kart.HC) the Hon'ble High Court of Karnataka held that special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In **Damodar Valley Corporation Bokaro Vs. Union of India**, 2015 LIC 3524 (Jharkhand HC) the Hon'ble High Court of Jharkhand held that special allowances paid to the employees will form part of basic wages.

The Hon'ble High Court of Madras in **Universal Aviation Service Private Limited Vs Presiding Officer EPF Appellate Tribunal**, 2022 LLR 221 again examined this issue in a recent decision. The Hon'ble High Court of Madras observed that it is imperative to demonstrate that the allowances paid to the employees are either variable or linked to any

incentive for production, resulting in greater output by the employees. It was also found that when the amount is paid, being the basic wages, it requires to be established that the workmen concerned has become eligible to get extra amount beyond the normal work which he is otherwise required to put. “As already pointed out that the respondent authority after considering the nature of the allowances paid included only travel allowances and refreshment allowances for the purpose of determining the dues and allowances like HRA are excluded from the assessment. Hence I don’t find any infirmity in the impugned order.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer