



सत्यमेव जयते

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

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

(Wednesday the 3rd November of, 2021)

Appeal No 74/2018
(Old No. A-KL – 49 / 2016)

Appellant

M/s. Soffit infrastructure Services
(P) Ltd , Raj Bhavan,
Power House Road,
Palarivattom , Kochi – 682 025.

By Adv. Paulson C. Varghese

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor
Kochi – 682017

By Adv. S. Prasanth

This case coming up for hearing on 29.04.2021 and
this Tribunal-cum-Labour Court passed the following on
03.11.2021.

ORDER

Present appeal is filed from order no. KR / KCH / 27652 / Enf-3(5)/2016/18042 dt. 31/03/2016 assessing the dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 03/2013 to 09/2014. The total dues assessed is Rs.3,23,427/-.

2. The appellant is a private limited company engaged in information technology. It is covered under the provisions of the Act. An Enforcement Officer conducted an inspection of the appellant establishment and submitted a report alleging non-remittance of wages. The respondent authority initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing on 18/01/2016 and the enquiry was adjourned to 20/01/2016 for production of certain records. The appellant could not attend the hearing due to an oversight. The representative of the appellant approached the respondent on

21/01/2016 and requested for an opportunity to be heard. Without considering the request, the respondent issued the impugned order which is produced and marked as annexure A1. The appellant had been contributing on basic wages and DA as required under the provisions of the Act and Scheme. The pay structure of the appellant includes basic wages, dearness allowance, conveyance allowance, medical allowance, professional updation etc. The appellant excluded allowance such as HRA, Conveyance allowance etc as the same is excluded from the definition of basic wages. The Hon'ble Supreme Court of India in **M/s. Bridge Roof & Co. Ltd Vs Union of India**, AIR 1963 SC 1474 and **Manipal Academy Case**, 2008 (5) SCC 428 held that on a combined reading of Sec 2(b) of Sec 6 of 1952 Act , the wages which is universally , necessary and ordinarily paid to all across the board are basic wages and where the payment is available to specially paid to those who avail of the opportunity is not basic wages. Certain allowances such as HRA, Overtime allowance,

bonus, commission etc are specifically excluded from the provisions of the Act .

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 01/04/1999. The Enforcement Officer during his inspection of the appellant establishment found that the appellant establishment is splitting wages into various allowances and under reporting basic wages. On the basis of the report of the Enforcement Officer an enquiry U/s 7A of the Act was initiated. Summons dt. 06/01/2016 was issued to the appellant fixing the enquiry on 18/01/2016. A representative of the appellant attended the enquiry but failed to produce the records. Enquiry was therefore adjourned to 20/01/2016 with instruction to produce the records called for. Nobody attended the enquiry on 20/01/2016, eventhough the date of enquiry was already notified to the appellant. The inspection report of the Enforcement Officer was already served on the appellant along with the notice dt. 06/01/2016.

The appellant did not raised any dispute regarding the calculation of dues by the Enforcement Officer. Respondent authority therefore issued the impugned order. A combined reading Sec 2(b) and Sec 6 would clearly show that the appellant is liable to remit contribution in respect of all allowances excluding those allowances which are specifically mentioned in Sec 2(b)2 of the Act. Any similar allowance mentioned Sec 2(b)(2) of the Act takes it colour from the expression commission because the said express uses the word “ similar allowance”. There is no similarity in the nature of allowance mentioned in Sub Sec 2 as they are founded on wholly unrelated considerations. The respondent also relied on various decisions of the Hon'ble Supreme Court of India and various High Courts to justify the assessment of dues on escaped wages.

4. On a perusal of the impugned order, it is seen that the respondent authority assessed the dues on escaped to wages for the period from 03/2013 to 09/2014. The appellant responded

to the summons but failed to produce any records on 18/01/2016. The enquiry was adjourned dt. 20/01/2016 with a specific direction that the appellant shall produce the records called for on that date. The appellant failed to attend the hearing on 20/01/2016 and therefore the respondent authority issued the impugned order on the basis of the report of the Enforcement Officer. The issue involved in this proceedings was with regard to the provident fund liability on escaped wages. The impugned order states that the appellant establishment is remitting contribution on basic and DA only. However it is not clear from the impugned order which are the allowances paid by the appellant to its employees and which are the allowances that will attract provident fund deduction. In the appeal memorandum it is stated that the appellant establishment is having a pay structure with basic wages, DA, HRA, Conveyance allowance, medical allowance and professional updation. However it is not clear from the impugned order as to which are the allowances considered and

included in the evaded wages by the respondent authority. To that extent the impugned order is a completely non-speaking order. HRA, for example is an excluded allowance U/s 2(a)(2) of the Act. Hence if the respondent authority wanted to consider HRA as a component of basic wages he shall give the reasons for the same. Similarly the Hon'ble Supreme Court as well as various high courts including the Hon'ble High Court of Kerala has evolved various tests to decide whether a particular allowance will form part of basic wages. The respondent authority has not considered any of those tests while deciding the evaded wages on which provident fund contribution is quantified.

5. The learned Counsel for the appellant has taken a specific stand there is clear violation of natural justice as the appellant was not provided adequate opportunity to produce the relevant records before the enquiry is concluded. Though the appellant was provided the opportunity with a specific direction to produce the relevant records before the authority,

the appellant failed to avail the opportunity. However in the circumstances of this case, it is felt that the appellant can be given one more opportunity for producing the records before the respondent authority. The respondent authority shall take into account the various directions issued by the Hon'ble Supreme Court as well as High Courts on the relevant subject before a issuing a speaking order. If the respondent authority feels that certain allowances are required to be consider as basic wages, he shall furnish his reasons for doing so.

6. Considering the facts, circumstances and pleadings in this appeal, the impugned order cannot be sustained.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent authority to re-decide the matter within a period of 6 months from the date of receipt of this order. The respondent shall issue notice to the appellant. If the appellant fails to attend the hearing or fails to produce records called for, the respondent

authority is at liberty to decide the matter in accordance with law on the basis of the available records. The pre-deposit made by the appellant U/s 7(O) of the Act as per the direction of EPF appellate Tribunal shall be adjusted or refunded after finalization of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer