



सत्यमेव जयते

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

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

(Thursday the 30th day of December, 2021)

APPEAL No.97/2018

Appellant M/S Veekshanam Printing & Publishing
Company Limited,
Veekshanam Road
Kochi -682018

By Adv. C.S. Ajith Prakash

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

By Adv. S. Prasanth

This case coming up for final hearing on
20/09/2021 and this Tribunal-cum-Labour Court on
30/12/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/KCH/
4837/Enf -5(1)/2017/13522 dt.06/02/2018 assessing dues

U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) on evaded wages for the period from 04/2013 to 08/2015. The total dues assessed is Rs.5,85,007/-.

2. The appellant is a company registered under the provisions of Companies' Act and engaged in the business of publication of a malayalam daily. The appellant is covered under the provisions of the Act. The appellant establishment was closed on 04/09/1998 and restarted from 14/11/2005. An Enforcement Officer of the appellant visited the establishment and submitted a report alleging that there was splitting of wages for the period from 04/2013 to 08/2015. A true copy of the report of Enforcement Officer 11/01/2018 is produced and marked as Annexure 1. The respondent authority initiated an enquiry U/s 7A of the Act. An authorized representative of the appellant attended the hearing and pointed out that the report of the Enforcement Officer is vague in as much as did not contain any material

particulars such as name of employee or the details at how the wages as to split. The appellant denied the allegation of the splitting up wages. Ignoring the contentions the respondent issued the impugned order. Copy of the order dt. 09/02/2018 is produced and marked as Annexure 2. The action of the respondent is invoking Sec 7A to assess the dues on evaded wages is not legally correct. The identities of the employees are not revealed. The manner in which the wages are split up is also not revealed. The appellant remitted the contribution as required U/s 2 (b) of the Act.

3. The respondent filed counter denying the above allegations. The appellant is covered with effect from 28/2/279 under the schedule head newspaper establishment. An enquiry U/s 7A was initiated on the basis of a complaint received from Shri. Srijith R Pillai regarding his non-enrollment from the date of joining the appellant establishment. During the course of

investigation by the Enforcement Officer the Enforcement Officer noticed that the appellant is splitting up the wages of the employees and thereby evading statutory contributions under the provisions of the Act. The Enforcement Officer submitted his report dt. 11/1/2016 a copy of which was sent by registered post to the appellant establishment and the same was acknowledged by them. The Enforcement Officer reported that the appellant establishment was remitting provident fund only on 50% of the gross wages of the employees. The wages was split up into various components like basic, dearness allowance, house rent allowance, city compensatory allowance, shift allowance and special allowance. The salary statement for the period from 04/2013 to 12/2015 was also submitted by the Enforcement Officer along with the inspection report. The wage details of one of the employee Shri.Cleetus V.T. for example would show that the wages are split up and

provident fund contribution is paid only on 50% of the gross salary. The basic pay of Shri. Cleetus is Rs.3000/-, dearness allowance is Rs.750/-, house rent allowance is Rs.1500/-, city compensatory allowance is Rs.750/- and shift allowance is Rs.500/- and special allowance is Rs.1000/- and the gross salary of the employee is Rs.7500/-. The salary taken for provident fund deduction is only basic and DA which comes to Rs.3750/-. During the course of hearing the appellant neither submitted any written objection regarding the report of the Enforcement Officer nor produced any document to dispute the report. Therefore the respondent authority issued the impugned order in terms of the report of the Enforcement Officer. The appellant was provided nine opportunities for disputing the claim. Having failed to raise any objection during the course of the enquiry they cannot raise the same in this appeal.

4. The learned Counsel for the appellant during the hearing argued that the impugned order is a non-speaking order. It is seen that the Enforcement Officer conducted an inspection of the appellant establishment and submitted a copy of the report to the appellant which is acknowledged by the appellant establishment. Since the appellant failed to comply, the respondent initiated an enquiry U/s 7A of the Act. The appellant was provided nine opportunities started from 02/08/2016 to 20/12/2017 to dispute the report of the Enforcement Officer by producing the relevant records before the respondent authority. However the appellant failed to do so, since there was no dispute the respondent authority issued the order in terms of the report of the Enforcement Officer. It is true that the impugned order is not a speaking order. However in the circumstances of this case it is not possible to hold that it will prejudicially affect the appellant, in any way. In the event of non co-operation

by an employer during the course of Sec 7A enquiry. The Act provides the mode of assessing the dues. As per Sec 7A (3A)

“ Where the employer, employee or any other person required to attend the enquiry under sub Sec (1) fails to attend such enquiry without any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the enquiry may decide the applicability of the Act or determine the amount due from any employer, the case may be, on the basis of the evidence adduce during such enquiry and other document available on record ”.

5. The Hon'ble High Court P&H in T.C.M Woollen Mills Vs Regional PF Commissioner, 1980(57) FJR 222 held that

“ Unless the objections and factual matters are pressed before the Commissioner, he cannot imagine the same and adjudicate thereon. When the objections raised are vague and devoid of necessary particulars, a finding that a plea is untenable would be sufficient compliance with the requirement of a reasoned order.”

A similar stand was taken by the Hon'ble High Court of Bombay in **Super Processors Vs Union of India**, 1994 (III) LLJ 564 (Bom), wherein the Hon'ble Court held that “ Since the petitioner have chosen not to file reply to the show cause notice and not to lead evidence in support thereof, there was nothing which was required to be adjudicated upon. Hence the impugned order cannot be assailed on the ground that it is not a speaking order.” In this case though the appellant was afforded nine opportunities by the respondent he failed to file any

written statement of objection or evidence before him to substantiate their claim.

6. The issue involved in this appeal is with regard to splitting up of wages. According to the learned Counsel for the appellant the wages are split in such a way that the appellant establishment is paying contribution only on 50% of the gross pay that is being paid to the employees by the appellant establishment .

7. 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.

8. 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 were again 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 camouflaged 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”.

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 on the appellant 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 employee. 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. The Hon'ble High Court held that,

“Para 9. The predominant ground raised by the petitioner before this Court is that other allowances and washing allowance will not attract contributions. In view of the aforesaid discussions and law laid down by the Hon'ble Supreme Court in **Vivekananda Vidya Mandir case (supra)**, the petitioners' claim cannot justified or sustained since “other allowance”

and washing allowance have been brought under the purview of Sec 2 (b) read with Sec 6 of the Act”.

9. In this case it is seen that the appellant is paying basic dearness allowance, house rent allowance, city compensatory allowance, shift allowance and special allowance uniformly to all its employees. HRA is an allowance specifically excluded under the provisions of the Act. All other allowances will attract provident fund deduction in view of the fact that it is universally and uniformly paid to all the employees.

10. 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