



सत्यमेव जयते

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

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

(Tuesday the 4th day of May, 2021)

APPEAL No.2/2018

Appellant : M/s.Focuz Innovation Pvt Ltd
2nd Floor, Focuz Towers
Edappally
Kochi - 682024

By Adv.C. B. Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloore
Kochi – 682017

By Adv.S. Prasanth

This case coming up for final hearing on 09.03 .2021 and this Tribunal-cum-Labour Court on 04.05.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/21027/ENF-3(4)/2017/664 dt.16.10.2017 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of non enrolled employees for the period from 06/2013 to 02/2015. The total dues assessed is Rs.3,60,804/-.

2. Appellant is a private limited company engaged in the business of developing software. The appellant was regular since the date of coverage. The appellant received a notice dt.13.03.2017 issued U/s 7A of the Act by the respondent. A representative of the appellant attended the hearing and produced the records. During the course of enquiry, it was pointed out that some of the employees drawing salary below to the statutory limit was not enrolled to the fund. The respondent failed to furnish a copy of the inspection report on the basis of which he passed the impugned order. The appellant therefore filed an application under RTI Act for a copy of inspection report. The appellant will be able to plead further contention only after receiving the copy. The respondent assessed the dues on various allowances paid to the employees. The respondent failed to consider the pleadings of the appellant made during the course of the enquiry.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 01.04.2004. During the course of inspection by the Enforcement Officer, it was noticed that the establishment had not enrolled all eligible and entitled employees under EPF Scheme. The appellant is having two divisions i.e., M/s.Focuz InfoTech and M/s.Focuz Education and majority of the employees

joined the service of the establishment during the 1st and 2nd week of respective months. Their salary was below the statutory limit during the 1st month when they joined service. According to the report of the Enforcement Officer during the subsequent months the salary is above the statutory wage limit. An enquiry U/s 7A was initiated vide summons dt.13.03.2017. A representative of the appellant attended the hearing but failed to produce any documents. The representative also pleaded that the appellant establishment is facing huge financial crisis at that point of time. Para 26 of EPF Scheme mandates that every employee employed in connection with the work of the establishment shall be entitled to be enrolled to provident fund from the date of joining the said establishment. After amendment of Para 26 of EPF Scheme, an employee who is engaged even for one day in connection with regular work of the establishment is treated as an employee for the purpose of the Act. As per Para 2(f) of EPF Scheme, an excluded employee means an employee whose pay at the time he is otherwise entitled to become a member of the fund exceeds Rs.6500/15000 per month. An employee who was drawing a pay of more than Rs.6500/15000 at the time of his joining the establishment will cease to be an excluded employee in case his pay was subsequently reduced to Rs.6500/15000 per month. The appellant was given adequate opportunity

to substantiate their claims before the respondent authority. However the appellant failed to avail the same.

4. The impugned order specifically states that the appellant failed to enroll some of the employees who are otherwise eligible to be enrolled to the fund. It is also stated that the salary of these employees during their first month of employment was less than the statutory limit at that point of time. The impugned order is seen issued because the appellant failed to produce any documents to prove their case that these employees joined during the middle of the month and therefore they were paid lesser salary. In the appeal memorandum, the claim of the appellant is that the appellant has taken various allowances for the purpose of calculating provident fund dues for the relevant period of time. It was also pleaded that the report of the Enforcement Officer on the basis of which the enquiry was initiated was not provided to the appellant and therefore the appellant was not aware of the reason for initiating an enquiry U/s 7A of the Act. It was also pointed out in the pleading that the appellant applied for a copy of the report of the Enforcement Officer under RTI Act and on receipt of the report the appellant may be allowed to amend the pleadings. However no such application for amendment is received from the appellant.

5. The learned Counsel for the appellant during the course of argument submitted that certain employees of the appellant establishment joined during the middle of the month and their salary/wages were paid only for part of the month and therefore it was below the statutory wage limit. However the next month onwards the salary is beyond the statutory limit and therefore those employees will have to be excluded employees as per the provisions of the Act and Scheme. In the reply filed the respondent also conceding that “ According to the Enforcement Officer during the subsequent month the salary is above statutory wage limit ”. The respondent is however compelled to issue the impugned order as the appellant failed to produce relevant records to substantiate their claim before the respondent authority. It is felt that just because the salary for the part of the first month of their employment is below the statutory limit and from subsequent month onwards, the salary for full month is beyond the statutory limit it is not correct to interpret the provisions of law to conclude that such employees will have to be treated as employees as per the provisions of the Act and Schemes.

6. The respondent shall also examine whether the appellant collected Form 11 from all these employees to confirm whether they were enrolled to provident fund earlier. If so, their membership will continue

even in the present employment. Further the appellant will have to consider the fact that the statutory wage limit has been increased to Rs.15000/- w.e.f. September 2014 and therefore whether these employees will come within the provisions of the Act w.e.f. that date. The learned Counsel for the appellant argued that the copy of the inspection report was not provided to the appellant at the time of 7A enquiry.

7. Considering all the above facts, circumstances and pleadings in this appeal, I am inclined to hold that the impugned order cannot be sustained.

Hence the appeal is allowed, the impugned order is set aside and the respondent is directed to re-assess the dues on the basis of the above directions within a period of 6 months after issuing notice to the appellant. A copy of the report of the Enforcement Officer shall also be forwarded to the appellant along with the notice. The amount pre-deposited by the appellant U/s 7(O) of the Act as per the direction of this Tribunal shall be adjusted/refunded after conclusion of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer