



सत्यमेव जयते

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

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

(Tuesday the 5th day of January, 2021)

APPEAL No.105/2018

Appellant : Shri.Muhammed Feroth
Kedungattuparambil House
Ettumana, Karuvannur
Thrissur - 680711

By Adv.P.Ramakrishnan

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 03.12.2020 and this Tribunal-cum-Labour Court on 05.01.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/19396/Enf-4(1)/2016/4749 dt.07.06.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 07/2000 to 09/2001. The total dues assessed is Rs.2,04,244.25.

2. The appellant is a firm engaged in the manufacturing of ceramic tiles. The appellant establishment is closed w.e.f. 08/2010. The appellant establishment was covered under the provisions of the Act. The respondent initiated action U/s 7A of the Act and passed an order dt.24.01.2002 assessing the dues for the period 07/2000 to 09/2001. A true copy of the order is produced and marked as Annexure A1. Annexure A1 order was issued without hearing the appellant and therefore an application U/s 7A(4) of the Act was filed. The respondent did not consider the review application. However the appellant was served with a recovery notice. The appellant approached the Hon'ble High Court of Kerala in O.P. no.17054/2002. The Hon'ble High Court of Kerala disposed of the OP directing the appellant to appear before the respondent on 12.12.2006. A true copy of the order of the Hon'ble High Court in O.P.no.17054/2002 is produced and marked as Annexure A3. The appellant could not appeared before the respondent on the appointed date and the respondent confirmed the demand as per Annexure A1. The appellant sought some time to appear before the respondent which was rejected by the respondent. The Hon'ble High Court in IA.no.3393/2007 in O.P. no.17054/2002 granted two weeks time to comply with the directions in Annexure A3 judgment. The respondent ignored the said direction and issued arrest warrant against the appellant. The appellant filed W.P.(C) no.15338/2007 challenging the arrest

warrant. The Writ Petition was disposed by the Hon'ble Court vide judgment dt.04.06.2012 directing the appellant to deposit Rs.1 Lakh and with a direction to the respondent to consider the review application. True copy of the judgment is produced and marked as Annexure A5. The appellant remitted Rs.1 Lakh and appeared before the respondent and produced 4 challans evidencing payment for the months of 08/2001, 09/2001 and 03/2001 to 05/2001. A true copy of the statement dt.08.04.2014 filed by the appellant before the respondent is produced and marked as Annexure A6. The challans produced by the appellant would show that the contribution for the period from 07/2002 to 09/2001 is already remitted by the appellant. Without considering the submissions made by the appellant the respondent posted the enquiry on various dates. The appellant appeared before the authority on 23.05.2016 through a lawyer and apprised him that no records were available with the appellant and the factory is closed from 08/2010.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f. 01.07.2000. The appellant failed to comply with the provisions of the Act w.e.f. 07/2000 to 09/2001. According to the records available, the registration of the appellant establishment is cancelled by the Factories & Boilers Department w.e.f. 01.01.2012. The appellant was summoned U/s 7A vide summons

dt.23.11.2001 and 02.01.2002. The appellant failed to attend the enquiry on both the occasions. Hence the respondent issued an order assessing dues on the basis of the statutory return in Form 12A filed by the appellant and also on the basis of the report of the Enforcement Officer dt.10.01.2002. The Enforcement Officer of the respondent visited the appellant establishment on 03.01.2002 and 10.01.2002 but the appellant establishment refused to produce any records or challans for verification. The appellant also failed to appear before the respondent. The Annexure A1 order was passed based on the statutory returns filed by the appellant. The respondent concluded the enquiry as the appellant had already admitted the liability by filing the statutory return in Form 12A. The appellant approached the Hon'ble High Court of Kerala in O.P. no. 17054/2002 against the recovery notice. The Hon'ble High Court vide judgment dt.10.11.2006 directed the appellant to appear before the respondent on 12.12.2006 for consideration of the review application. But the appellant failed to appear before the respondent. Hence the Annexure A1 order was confirmed vide letter dt.20.12.2006. The appellant thereafter filed W.P.(C) no.15338/2007 and the Hon'ble High Court of Kerala vide judgment dt.04.06.2012 directed the appellant to remit an amount of Rs.1 Lakh with the respondent and also with the further direction to the respondent to consider the Annexure A2 review application. The appellant remitted Rs.1 Lakh on

19.07.2012. The appellant was afforded 17 opportunities for producing the records. But the appellant never produced any records before the respondent. A Counsel for the appellant appeared before the respondent on 23.05.2016 and requested to issue orders on the basis of the records available in the files of EPFO as they are not in a position to produce any documents.

4. The appellant establishment is covered under the provisions of the Act w.e.f. 07/2000. The appellant defaulted in remittance of contribution for the period from 07/2000 to 09/2001. Hence the respondent initiated action U/s 7A which culminated in an order dt.01.02.2002 assessing an amount of Rs.2,04,244.25. The appellant filed a review application U/s 7A(4) of the Act which came to be rejected. In the meanwhile the respondent initiated recovery action against the appellant. The appellant approached the Hon'ble High Court in O.P. no.17054/2002. The Hon'ble High Court of Kerala vide order dt.10.11.2006 allowed the petition at a cost of Rs.1000/- to be paid to the respondent and directed the appellant to appear before the respondent on 12.12.2006. The appellant did not attend the hearing on 12.12.2006 as directed by the Hon'ble High Court. Hence the respondent issued Annexure A4 communication confirming the Annexure A1 order. The respondent issued arrest warrant against the appellant in the recovery proceedings. The appellant again approached the Hon'ble High Court in W.P.(C)no.15338/2007. The

Hon'ble High Court of Kerala vide judgement dt.04.06.2012 directed the appellant to deposit an amount of Rs.1 Lakh with the respondent within a period of two weeks and also directed the respondent to re-consider the review application filed by the appellant. The appellant remitted Rs.1 Lakh as directed by the Hon'ble High Court. Accordingly the respondent re-opened the enquiry as directed by the Hon'ble High Court. It is seen from the impugned order that the proceedings were initiated on 01.02.2014 and concluded on 23.05.2016 after giving 16 opportunities to the appellant to produce the records. On 23.05.2016 an Advocate representing the appellant appeared before the respondent and submitted that the appellant has no more records or documents to be produced and requested that the proceedings may be finalised on the basis of the available records. Hence the respondent issued the impugned order. As per the impugned order the appellant establishment is covered from 07/2000 with 20 employees, the names and wages of whom were supplied by the appellant at the time of coverage. The appellant also filed the statutory return admitting the liability for the period from 07/2000 to 09/2001 were the wages and contribution of the employees of the appellant are reflected. Further an Enforcement Officer of the respondent who conducted the inspection of the appellant establishment also reported the default of the appellant establishment. The learned Counsel for the appellant raised two

contentions. The first one being that the appellant had already remitted the contribution for the period from 07/2000 to 09/2001. It is seen that in Annexure A1 order dt.01.02.2002 itself the respondent has accounted the remittance made by the appellant to the tune of Rs.56,103/-. The second argument of the learned Counsel for the appellant was that the Rs.1 Lakh remitted by the appellant as per the direction of the Hon'ble High Court was not accounted by the respondent. In the written statement filed by the respondent it was confirmed that the receipt of Rs.1 Lakh was acknowledged in the impugned order itself. It is also pointed out that in the subsequent recovery notice issued by the Recovery Officer the balance amount only is claimed from the appellant. This is a matter pertaining to the period from 07/2000 to 09/2001. The respondent has given adequate opportunity to the appellant to produce records and to represent his case before the impugned order is issued. As already pointed out the appellant was given 16 opportunities to produce records, if any, before the respondent and a Counsel representing the appellant only submitted that they do not have any records to be produced as the appellant establishment is closed in 2010. Further it is seen that the impugned order is issued on the basis of the statutory returns in Form 12A filed by the appellant. Hence the appellant cannot dispute the liability to pay the amount. However if there is any amount which is remitted by the appellant

and is not accounted in the impugned order, the appellant may produce the details if any, before the respondent within a period of two months from the receipt of this order and the respondent shall consider the same and recover only the balance amount from the appellant.

5. Considering all the facts and circumstances of this case, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer