



सत्यमेव जयते

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

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

(Thursday the 21<sup>st</sup> day of January, 2021)

**APPEAL No.134/2019**  
(Old No.1307(7)2014)

Appellant : M/s.Fort Heritage (P) Ltd  
Napier Street  
Fort Kochi - 682002

By Adv.Jimmy George & Jose Antony

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

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 22.12.2020 and this Tribunal-cum-Labour Court on 21.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KCH/29037/ENF3(8)/2013/11823 dt.25.10.2013 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') finalising the date of coverage as well as quantifying dues from 02/2012 to 01/2013. The total dues assessed is Rs.2,17,120/-.

2. The appellant is a company registered under the Companies Act. Appellant establishment is a heritage hotel with lodging facility and a restaurant. The appellant is not covered under the provisions of the Act as the appellant never engaged more than 19 employees from the very inception. The Managing Director and other Directors are not working for wages. During the season time from October to March few more employees will be engaged on the condition that they will be dis-engage after the season. The appellant is covered under the provisions of the ESI Act w.e.f. 12/2006. The appellant company was closed w.e.f. 04/2013 to 12/2013. An Enforcement Officer of the respondent visited the appellant establishment and he was provided with a copy of the Memorandum of Association, wage register, register certificate issued by the Assistant Labour Commissioner, audited Profit & Loss account for the years 2010-11, attendance register of 4 employees from 05/2010 to 03/2011 and wage register for 03/2011. The wage register and attendance registers were scrutinised by the authority from ESI Corporation, Provident Fund and Assistant Labour Office. Since the Enforcement Officer could not find the required number of employees, he did not recommend the coverage of the appellant establishment. On the basis of a complaint another Enforcement Officer visited the appellant establishment and submitted a report along with attendance registers for the month of 10/2010 to 10/2011 and muster roll for the month of

02/2010 and 11/2011 to 03/2012. On the basis of the report of the Enforcement Officer, an enquiry U/s 7A was initiated. During the course of 7A, the original attendance registers were produced before the respondent. The appellant could not produce complete records as many of the original records were with the respondent. The appellant also explained that the wage register produced by the appellant tally with the audited Profit & Loss account of the company. The attendance register and wage register maintained by the appellant would tally with the audited Profit & Loss account and this would prove that the wage register produced by the employees and the second Enforcement Officer all are fabricated. One of the ex-employee Mr.M.J.Thomas who was working as receptionist was the real culprit behind the compliant and also the manipulations. The Enforcement Officers who conducted the inspection did not record the number of employees in the inspection report as they could not locate more than 9 employees on the date of their visit. Without considering the above representations, the respondent issued the impugned order. The appellant engaged only 4 employees and the copy of the registration certificate issued by the Assistant Labour Officer is produced and marked as Annexure A2. Copy of the relevant pages of attendance register and wage register evidencing the verification of the same by various authorities are produced and marked as Annexure A3 and Annexure A4. The copy of the audited Profit & Loss account of

the appellant for the relevant period is produced and marked as Annexure A5 series. The copy of the letters sent by Sri.Roopesh and Ms.Jalaja who were working with the appellant during the relevant point of time are produced and marked as Annexure A6 and A7 respectively.

3. The respondent filed counter denying the above allegations. The appellant is a heritage hotel and was inspected by one of the Enforcement Officers of the respondent on the basis of a compliant. The Enforcement Officer reported that the records produced by the appellant would show only 4 employees. The respondent received another complaint which contains the name and address of 27 employees. They also enclosed a salary register with 22 employees for the month of 11/2010. A copy of the muster roll for 02/2010 and 05/2012 are also enclosed along with the compliant. A squad of Enforcement Officers were deputed to inspect the records and investigate into the complaint. The squad of officers inspected the appellant establishment on 17.09.2012. The squad collected the attendance register in original for the months 10/2010 to 10/2011 and muster roll for 02/2010 to 09/2010 and 11/2011 to 03/2012. As per the attendance register, the employment strength as on 02/2010 was 28. The squad also got the salary statements for 10/2010 to 12/2010 which clearly shows that salary was paid to 24, 22 and 21 employees respectively during that period. Accordingly they recommended coverage of the establishment w.e.f.

01.02.2010. Since there was no compliance, an enquiry U/s 7A of the Act was initiated. Some of the complainants, as well as the appellant attended the hearing. The respondent finalised the enquiry on the basis of the available information and the records produced by the Enforcement Officers. The contention of the appellant that the respondent relied on fabricated records produced by the complainant was not correct. The respondent relied on the documents seized from the premises of the appellant by the squad of Enforcement Officers. The claim of the appellant that they were engaging only 4 employees cannot be accepted. The appellant establishment is a heritage hotel having 10 rooms and a restaurant. It is not possible to manage such an establishment with 4 employees. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) no.1079/2015 aggrieved by the proceedings U/s 7A and also the recovery action. The Hon'ble High Court disposed the Writ Petition with an observation that the records seized by the squad of Enforcement Officers clearly indicated that the appellant employed more than 20 employees.

4. There are two issues raised by the learned Counsel for the appellant in this appeal. The 1<sup>st</sup> one is with regard to the coverability of the appellant establishment under the provisions of the Act and the second issue being the assessment of dues as per the impugned order. According to the learned

Counsel for the appellant, the appellant establishment engaged only 4 employees and during the season they engaged few more employees depending on the requirement, on the condition that their services will be terminated at the end of the season. At any cost the employment strength of the appellant establishment never crossed 10 during the relevant point of time. According to the learned Counsel for the respondent, the appellant establishment is a heritage hotel with 10 rooms and a restaurant. It is not possible to run such an establishment with 4 employees. On the basis of a complaint received by the respondent an Enforcement Officer was deputed to investigate. After verification of the records produced before him, the Enforcement Officer reported that the employment strength of the appellant establishment was only 4. Therefore he did not recommend the coverage of the appellant establishment under the Act. Later the respondent received another complaint signed by more than 20 employees and enclosing therewith the attendance and wage register for few months showing that the appellant establishment engaged more than 20 employees. The respondent therefore deputed a squad of Enforcement Officers to investigate into the complaint. During the inspection they seized the attendance register and wage register for few months in original and from the records seized by the squad of Enforcement Officers, it could be seen that the employment strength crossed 20

in 02/2010. Accordingly the appellant establishment was covered under the provisions of the Act from 02/2010. Since the appellant failed to comply under the provisions of the Act, an enquiry U/s 7A was initiated. The enquiry was attended by the appellant and also some of the complainants. The appellant produced the attendance register which indicated that the employment strength was only 4. However the respondent relied on the documents seized by the squad of Enforcement Officers to establish that the employment strength crossed 20 in the month of 02/2010 and is statutorily coverable. The appellant produced copy of the wage registers for 02/2008, 02/2010 and 08/2011 and the muster roll for the month of 02/2008 and also 02/2010. The appellant also produced the Profit & Loss account for the year ending 31.03.2010 and the year ending 31.03.2011 to substantiate their case that their employment strength during the relevant period was only 4. It sees that Annexure A3(2) and Annexure A3(3) are the attendance registers claimed to be for the month of 02/2010. But these 2 documents shows different names in the attendance register for the same month of 02/2010. Further the appellant also produced the wage register for the month of 01/2008. On the basis of the wage register for 2008-09 the total wages paid to the employees comes to 1.38 Lakhs whereas the P & Loss account for the year 2008-09 shows the salary and wage particular excluding the Directors as Rs.7,92,635.84. Similarly as per Annexure

A4(2), the wage register for 02/2010, the total salary paid to the employees for a month is Rs.11500/- and it shall be Rs.1.38 Lakhs for the year 2009-10. However in the Profit & Loss account for the year 2009-10 the total wages shown is Rs.3,72,022/-. It clearly shows that the attendance and wage register produced by the appellant in this proceedings are completely fake and is manipulated to suit the requirement of the appellant. Though the appellant claimed that the Directors were not drawing any salary, Annexure A(5) Profit & Loss account shows that the Directors were paid a salary of Rs.6,60,000/- in the year 2008-09, Rs.3,00,000/- in the year 2009-10 and Rs.3,00,000/- in the year 2010-11. The respondent also pointed out that he relied on the documents i.e., the attendance and wage register seized by the squad from the office of the appellant and therefore the genuineness of the same cannot be disputed. Hence the findings of the respondent that the appellant is coverable under the provisions of the Act from 02/2010 cannot be disputed. The second issue is with regard to the assessment of dues. As per the impugned order, the appellant failed to produce the necessary records to quantify the dues properly. Respondent therefore quantified the dues on the basis of the wages reflected in the Profit & Loss account for the period from 02/2010 to 03/2010, 04/2010 to 03/2011 and 04/2011 to 03/2012. The impugned order also states that since the appellant failed to produce the records the dues from 04/2012 to 01/2013



is quantified on the basis of the dues payable on 03/2012. The respondent cannot be blamed for assessing the dues following the above procedure as the appellant failed to produce the original wage records of the employees. The appellant also claimed that the establishment remained closed during 04/2013 to 12/2013. The Hon'ble High Court of Delhi in **M/s.KEE Pharma Ltd Vs APFC**, 2017 LLR 871 held that if the appellant failed to produce the best evidence before the respondent authority at the time of the enquiry he cannot dispute the correctness of the claim later. However it is felt that that appellant shall be given one more opportunity to produce the actual records before the respondent authority to quantify the dues in a proper way.

5. In view of the above observations, the coverage of the appellant establishment under the provisions of the Act w.e.f. 02/2010 is confirmed. However the assessment of dues is set-aside and the appellant is given an opportunity to produce the records before the respondent authority for quantifying the dues properly. If the appellant fails to produce the records required for the proper quantification of the dues, the respondent may take an adverse inference and proceed with the assessment.

Hence the appeal is partially allowed, the coverage of the appellant establishment is confirmed as on 02/2010. The assessment of dues is set-aside and the matter is remitted back to the respondent to re-assess the dues within a period of 3 months after issuing notice to the appellant. If the appellant fails to produce the records, the respondent may take an adverse inference and proceed with the assessment.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer