



सत्यमेव जयते

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

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

(Monday the 3rd day of May, 2021)

APPEAL No.175/2019
(Old No.901(7)2015)

Appellant : M/s.Surabhi Buildwares
Surabhi Lodge
Kallupalam Road, Angamaly
Ernakulam - 683572

By Adv.C. B. Mukundan

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 05.03.2021 and this Tribunal-cum-Labour Court on 03.05.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/24984/ENF-5(3)/2015/2804 dt.22.06.2015 assessing dues U/s 7A of the Act (hereinafter referred to as 'the Act') against non enrolled employees for the period from 4/2013-01/2015. The total dues assessed is Rs.48,640/-.

2. The appellant establishment is engaged in trading of buildwares. The appellant was regular in compliance. The appellant stopped its activities in March 2013 and the activities of the appellant establishment was taken over by M/s.Surabhi Supreme Marbles & Granites Pvt Ltd an establishment covered independently w.e.f. 01.04.2013. The Enforcement Officer who conducted inspection of the appellant establishment pointed out that 7 of the employees were not enrolled to provident fund. The appellant took a view that all the 7 non enrolled employees were excluded employees as per Para 2(f) of EPF Scheme. It is true that the salary of these employees during certain months had fallen below the statutory limit of Rs.6500/- due to continuous absence by the employees. The appellant also explained the circumstances under which the salary of the employees came below Rs.6500/-. On the basis of the report of the Enforcement Officer, the respondent authority initiated an enquiry U/s 7A of the Act. The appellant attended the enquiry with relevant records. The appellant produced the wage registers before the respondent authority to prove that those 7 non enrolled employees are actually excluded employees as per the provisions and Act of the Scheme. The respondent directed the appellant to produce Form 11 obtained from the employees to prove that they were not provident fund members prior to joining the appellant establishment.

Since the appellant did not take any Form 11 from these employees, the same could not be produced. The appellant was not provided with a copy of the report of the inspection. The appellant was also not provided an opportunity to cross examine the Enforcement Officer who conducted the inspection of appellant establishment. The Regional Provident Fund Commissioner ought to have conducted an enquiry U/s Para 26B to decide the eligibility of the 7 employees to be enrolled to provident fund.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer vested with adequate powers U/s 13 of EPF & MP Act to access the records and documents, conducted an inspection of the appellant establishment and reported that 7 employees were not enrolled to provident fund. Accordingly an enquiry U/s 7A was initiated. The appellant took a stand before the respondent authority that these 7 employees were not enrolled to the fund are excluded employees U/s 2(f) of the Act as they were drawing more than Rs.6500/-, which was the statutory limit at that point of time. As per Para 36 of EPF Scheme, an employer shall send to the Commissioner within 15 days of commencement of the Scheme a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the fund showing the

basic wages, retaining allowance if any and DA including cash value of food concession paid to the employees. As per para 34 of EPF Scheme the employer in relation to the factory shall before taking any person into employment ask him in writing whether or not he was a member of the fund. If he was a member, the employee shall furnish the account number and the name and particulars of the last employer. If he is unable to furnish the account number, he shall require such person to furnish and such person shall on demand furnish to him for communication to the Commissioner particular regarding himself and his nominee required for the declaration form and obtain the signature and thumb impression of the person concerned. Form 11 is the statutory return prescribed for the above purpose. The appellant failed to produce the Form 11 in respect of these 7 employees at the time of enquiry and the respondent authority proceeded to assess the dues on the basis of the salary register produced by the appellant. At no point of time the appellant requested for a copy of the report or to cross examine the Enforcement Officer who conducted the inspection. The representative of the appellant who attended the hearing submitted that they have not obtained Form 11 from these 7 employees. Hence there is no dispute regarding eligibility and there is no issue regarding

the applicability of the Act to these employees under Para 26B of EPF Scheme.

4. EPF & MP Act provides for an institution of provident fund pension fund and deposit linked insurance fund as mandated by Constitution under Articles 38 and 43 of the Constitution of India. It is intended to give maximum social security to the person employed in factories and other establishments. The simple issue involved in this appeal is whether the 7 employees who were to enrolled to provident fund were really excluded as per Para 2(f) of EPF Scheme. According to the appellant all these employees were drawing salary beyond the statutory limit and therefore they are excluded employees. According to the learned Counsel for the respondent the salary register produced by the appellant during the course of 7A clearly shows that the salary drawn by these employees were below the statutory limit. According to the learned Counsel for the appellant, the salary is less than the statutory limit as reflected in the salary register because the employees were on leave and correspondingly the salary was reduced during those months. The respondent therefore insisted for production of Form 11 of these 7 employees. Collecting Form 11 from all the employees at the time of appointment is a mandatory requirement and statutory liability cast upon the employers as per Para 24 of EPF Scheme.

The appellant admitted that they have not collected the Form 11 from those employees at that point of time. The learned Counsel for the appellant pleaded that he may be given an opportunity to produce the Form 11 of all these employees before the respondent authority to satisfy the statutory requirement.

5. Considering the facts, circumstances and pleadings in this appeal, I am inclined to hold that the appellant can be given one more opportunity to adduce Form 11 before the respondent authority.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-examine the assessment in the light of the observations made above. The respondent shall issue the order within a period of 6 months after giving an opportunity to the appellant to produce the records. A copy of the report of the Enforcement Officer shall also be sent along with the summons. If the appellant fails to produce the required documents, the respondent may issue the order according to law. The pre-deposit made by the appellant as per the directions of this Tribunal U/s 7(O) of the Act shall be adjusted after finalising the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer