



सत्यमेव जयते

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

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

(Tuesday the 13<sup>th</sup> day of April, 2021)

**APPEAL No.184/2018**

Appellant : M/s.Sreevalsam Educational Trust  
Kololambu P.O.  
Edappal  
Malappuram – 679576

By Adv.C. Anil Kumar

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office  
Eranhipalam P.O.  
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 13.04.2021 and the same day this  
Tribunal-cum-Labour Court passed the following:

**ORDER**

Present appeal is filed from order no.KR/KK/1026805/ENF-3(5)/2017-18/5798 dt.05.12.2017 issued U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') assessing the dues on regular wages for the period from 09/2013 to 06/2017 excluding the period from 10/2013 to 12/2013 for which the appellant had remitted the contribution. The total dues assessed is Rs.1,46,35,361/-.

2. When the appeal was taken up for admission on 10.06.2019, the learned Counsel for the respondent submitted that there is a delay of more than one year in filing the appeal and therefore the appeal is barred by limitation. The respondent filed a preliminary objection regarding maintainability on the ground of limitation and also filed the acknowledgment card for having delivered the impugned order on the appellant on 13.12.2017. The learned Counsel for the appellant raised an objection regarding the acknowledgment card as the date of delivery was not clear. Hence the respondent was directed to produce the original or a legible copy of the acknowledgment card vide order dt.18.10.2019. The respondent prayed for time for production of the acknowledgment card. Since the respondent failed to produce a legible copy of the acknowledgment card for having delivered the 7A order, the prayer of the appellant was accepted and the appeal was

admitted vide order dt.21.10.2020. The learned Counsel for the appellant pleaded that the financial position of the appellant establishment is very bad and therefore requested that the pre-deposit stipulated U/s 7(O) of the Act need be waived. The learned Counsel for the appellant also submitted that the hospital was temporarily taken over by the Govt for Covid treatment and since the agreed rent amount is not released by the Govt, they are facing acute financial crisis. Considering the pleadings of the appellant, the appeal was admitted subject to remittance of 20% of the assessed dues against the required remittance of 75% as stipulated U/s 7(O). Subject to remittance of 20% of the assessed dues the impugned order was also stayed until further orders. It was reported on the subsequent posting that the appellant failed to deposit the pre-deposit amount ordered by this Tribunal U/s 7(O) of the Act. On 22.01.2021 the respondent also filed a review application, admitting the appeal, on the ground of limitation. The matter was posted to 27.01.2021 for confirmation of 7(O) deposit. The review petition filed by the respondent U/s 7(I) of the Act was also heard and reserved for orders. The appellant filed an application seeking extension of time for deposit of Sec 7(O) amount. The same was allowed and the appellant was directed to make pre-deposit on or before 10.03.2021. On 10.03.2021 the appellant again sought time and the matter was finally posted to 13.04.2021 for confirmation and hearing. On 13.04.2021 the learned Counsel

for the appellant submitted that the appellant failed to deposit the pre-deposit amount U/s 7(O) of the Act and he has no further instructions.

3. In **M/s.Muthoot Pappachan Consultancy Management Services Vs Employees Provident Fund Organisation**, 2009 (1) KHC 362, the Division Bench of the Hon'ble High Court of Kerala held that the deposit of 75% U/s 7(O) of the Act is a precondition for maintaining the appeal. Since the appellant failed to deposit the amount U/s 7(O) of the Act even after six months from the date of the order the appeal is not maintainable.

4. As already pointed out the learned Counsel for the appellant has taken a preliminary objection regarding limitation. According to him, the summons U/s 7A dt.05.10.2017 was sent to the appellant. A true copy of the summons is produced and marked as Annexure R1(a). The true copy of the postal acknowledgment for having served the summons on the appellant under the seal and signature is produced as Annexure R1(b). The impugned order U/s 7A was issued to the appellant on 05.12.2017 and is acknowledged by the appellant on 13.12.2017. A copy of the acknowledgment card is produced and marked as Annexure R1(d). As the appellant failed to remit the amount, a notice of demand was issued to the appellant on 24.04.2018 and the same is produced and marked as Annexure R1(e). The notice of demand was acknowledged by the appellant, a copy of which is produced and marked as

Annexure R1(f). Subsequently the appellant requested for the copies of the orders and the same was forwarded to the appellant vide Annexure R1(g) and the same was acknowledged by the appellant vide Annexure R1(h). According to the learned Counsel for the respondent, the impugned order dt.05.12.2017 is served on the appellant and the same is acknowledged by the appellant on 13.12.2017. According to the learned Counsel for the respondent, there was some delay in getting the legible copies from the office of the respondent and producing the same before this Tribunal. Hence he requested that the order admitting the appeal shall be reviewed since the appeal is totally barred by limitation. From the documents now produced by the respondent, it is clear that the impugned order dt.05.12.2017 was duly served on the appellant on 13.12.2017. The appeal is seen filed on 18.07.2018 after a period of almost one year.

5. As per Rule 7(2) of EPF Appellate Tribunal (procedure) Rules 1997 which is still applicable for filing of appeals under Section 7(I) of EPF & MP Act, 1952, any person aggrieved by an order passed under the Act, may prefer an appeal to the Tribunal within 60 days from the date of issue of order provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. As per the above provision,

appeal from an order issued under the provisions of the Act need to be filed within 120 days. There is no power to condone delay beyond 120 days under the provisions of the Act.

6. The Hon'ble High Court of Kerala considered the issue in **Dr.A.V.Joseph Vs APFC**, 2009 (122) FLR184. The Court observed that

“maximum period of filing appeal is only 120 days from the date of impugned order. When the statute confers the power on the authority to condone the delay only to a limited extend, it can never be widened by any court contrary to the intention of the law makers”.

The Hon'ble High Court of Delhi in **APFC Vs Employees Appellate Tribunal**, 2006 (108) FLR 35 held that in view of the specific provisions under Rule 7(2) the Tribunal cannot condone the delay beyond 120 days. As a general proposition of law whether the Courts can condone the delay beyond the statutory limit provided under a special Acts was considered by Hon'ble Supreme Court in **Commissioner of Customs & Central Excise Vs Hongo India Pvt Ltd**, (2009) 5 SCC 791 and held that whenever a statutory provision is made to file an appeal within a particular period the Court shall not condone the delay beyond the statutory limit applying Limitation Act. In **Oil & Natural Gas Corporation Ltd Vs Gujarat Energy Transmission Corporation**, (2017)5 SCC 42 the Hon'ble Supreme Court held that “the Act is a special legislation within the meaning of Section

29(2) of the Limitation Act and therefore, the prescription with regard to the limitation has to be the binding effect and same has to be followed, regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provision and policy of legislation. Therefore it is uncondonable and cannot condone taking recourse to Article 142 of the constitution". The Hon'ble High Court of Patna considered the implication of the limitation U/s 7(I) of the EPF & MP Act read with Rule 7(2) of Employees Provident Fund Appellate Tribunal Procedure Rule, 1997 in **Bihar State Industrial Development Corporation Vs EPFO**, (2017) 3 LLJ 174. In this case, the Employees Provident Fund Appellate Tribunal, New Delhi rejected an appeal from an order issued by Regional Provident Fund Commissioner, Bhagalpur on the ground of limitation. The Hon'ble High Court after examining various authorities and provisions of law held that,

"Para 15. Thus in view of the fact that the limitation is prescribed by specific Rule and condonation has also to be considered within the purview of the Rule alone and the provision of Limitation Act cannot be imported into the Act and Rules. This Court is of the view that the

Tribunal did not had the powers to condone the delay beyond the period of 120 days as stipulated in Rule 7(2) of the Rules. “

The Hon'ble High Court of Kerala also examined the issue whether the EPF Appellate Tribunal can condone the delay beyond 120 days in **Kerala State Defence Service Co-operative Housing Society Vs Assistant P.F.Commissioner**, 2015 LLR 246 and held that the employer is precluded from approaching the Tribunal after 120 days and Section 5 of Limitation Act, 1963 is not applicable to proceedings before the Tribunal. In **M/s.Port Shramik Co-operative Enterprise Ltd Vs EPFO**, 2018 LLR 334 (Cal.HC), the Hon'ble High Court of Calcutta held that the limitation provided under Rule 7(2) of the Appellate Tribunal(Procedure) Rules, 1997 cannot be relaxed. In **EPFO represented by Assistant P.F. Commissioner Vs K. Nasiruddin Biri Merchant Pvt Ltd**, 2016 LLR 367(Pat.HC), the assessment of dues U/s 7A of the Act to the tune of Rs.3,36,30,036/- was under challenge. EPF Appellate Tribunal condoned the delay in filing the appeal and set aside the order. The Hon'ble High Court of Patna set aside the order of the Tribunal holding that the Tribunal has no power to condone delay beyond 120 days.

7. Considering the facts that the appellant failed to deposit even the minimum pre-deposit of 20% of the assessed amount and since the dues assessed is the regular dues payable by the appellant and since the deposit U/s



7(O) in such cases is mandatory for maintaining the appeal, the appeal is rejected as the appeal is not maintainable. The appeal is also not maintainable as barred by limitation as discussed above.

Hence the appeal is dismissed as not maintainable on the ground of non pre-deposit and also on the ground of limitation.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer