



सत्यमेव जयते

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

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

(Friday the 9th day of April, 2021)

APPEAL No.21/2020

Appellant : The Dy. General Manager
M/s.Kerala Electrical & Allied
Engineering Company Ltd
Puthuparamba Post
Kottakkal Via
Malappuram - 676501

By Adv.M.K. Thankappan

Respondent : The Regional PF Commissioner
EPFO, Regional Office
Eranielalam Post
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 09.04.2021 and the same day this Tribunal-cum-Labour Court passed the following:

ORDER

Present appeal is filed from order no.KR/KKD/12788/0001027/09/04/2018/504/4/707 dt.16.05.2018 issued U/s 8 of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the recovery of an amount of Rs.3,11,493/-, from the appellant. The learned Counsel for the respondent opposed the admission of the appeal on two grounds. The 1st ground is that the appeal is filed against a

demand notice issued U/s 8 of the Act for recovery of the outstanding dues as per the provisions of Sec 8B to 8G of the Act. The impugned demand notice cannot be challenged in an appeal U/s 7(I) of the Act. The learned Counsel for the respondent also pointed out that the appeal is barred by limitation.

2. When the appeal was taken up for admission on 16.11.2020, the learned Counsel for the appellant submitted that he may be allowed to produce the relevant records to substantiate the case of delay. However it was pointed out to him that the impugned demand notice is one from which no appeal can be filed. However on the request of the learned Counsel for the appellant the matter was adjourned to 22.01.2021 and to 09.04.2021.

3. It is seen that the impugned order is Form no.E.P.F. C.P.1 notice of demand to the defaulter issued U/s 8 of the Act. Form no. E.P.F. C.P.1 is issued prior to initiating recovery action U/s 8B to 8G of the Act. On a perusal of Sec 7(I), it is seen that there is no provision to maintain an appeal from a notice of demand to the defaulter. Hence the appeal cannot be maintained on that ground alone. Further as rightly pointed out by the learned Counsel for the respondent, the appeal is completely barred by limitation. The impugned notice of demand to the defaulter is dt.16.05.2018 and the appellant ought to

have filed the appeal within 4 months as per the provisions of the Act and also the rules thereunder. It is seen that present appeal is filed after 3 years.

4. 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.

5. 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 extent, 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.

6. Hence the present appeal is not maintainable on both the grounds of non appealable impugned order as well as on the ground of limitation .

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer