



सत्यमेव जयते

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

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

(Thursday the 30<sup>th</sup> day of December, 2021)

**APPEAL No.21/2021**

Appellant : M/s.Josco Rubber (Pondy) Pvt Ltd  
8/50, Moonalingal  
Beach Post  
Kozhikode – 673032

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Eranshipalam  
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for hearing on 23.11.2021 and this Industrial Tribunal-cum-Labour Court on 30.12.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KKD/17653/ENF-II(2)/2018-19/2841 dt.09.01.2019 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 05/2017 to 04/2018 and on non enrolled employees from 01/2017 to 05/2017. The total dues assessed is Rs.22,18,921/-.

2. When the appeal was taken up for admission, the learned Counsel for the respondent pointed out that the appeal is barred by limitation. It is seen that the impugned order is dt.09.01.2019 and delivered on the appellant on 15.01.2019. The appellant ought to have filed the appeal within two months i.e. on or before 15.03.2019. The appellant also had an option to file the appeal within a further period of 60 days i.e. by 15.05.2019 in which case the delay can be condoned by the Tribunal. It is seen that the present appeal is filed on 31.03.2021 after huge delay and therefore is barred by limitation.

3. The learned Counsel for the appellant submitted that there was an illegal strike going on in the appellant establishment during the relevant period and the appellant was not in a position to access the records for filing appeal. To substantiate his claim the learned Counsel for the appellant produced the order of the Hon'ble High Court of Kerala in W.P.(C) no.14462/2019 dt.30.05.2019. As per the above order, it is seen that some labour agitation was taking place in the premises of the appellant factory and the Hon'ble High Court has ordered police protection in the event of the agitation turning violent. In view of the above, the appellant claimed that they had no access to the factory premises till May 2019. Had the appellant filed the appeal immediately after the police protection order issued by the Hon'ble High Court of Kerala, the delay could have been condoned. The appellant also will not get

the protection of the limitation extension order issued by the Hon'ble Supreme Court in *Suo Moto Writ Petition(Civil) No.3/2020* as the same is applicable only w.e.f. 15.03.2020 and the limitation period provided under the Act and Rules was over in May 2019 itself.

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 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. For the reasons stated above, I am not inclined to interfere with the impugned order on the ground of limitation.

Hence the appeal is dismissed as barred by limitation.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer