



सत्यमेव जयते

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

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

(Monday the 5<sup>th</sup> day of October, 2020)

**APPEAL No.24/2018  
(Old No.EPFAT (B)/KL/08/2016)**

Appellant : M/s.Kerala Electricals & Allied  
Engineering Co. Ltd  
Kundara  
Kollam - 691501

By M/s.Menon & Pai

Respondent : The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &  
Megha A.

This case coming up for final hearing on 18.02.2020 and this Tribunal-cum-Labour Court on 05.10.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KLM/37/ENF(1)4/2016/177 dt.21.04.2016 assessing dues U/s 7A of EPF & MP Act, 1952 for the period from 11/2013 to 05/2015. Total dues assessed is Rs.1,22,51,731/-.

2. The appellant is a Govt of Kerala undertaking engaged in the manufacture and marketing of switch gear. The establishment is covered

under the provisions of the Act. The appellant was regular in compliance with regard to provident fund remittance of contribution. The appellant was paying contribution at the rate of 12% on the total basic pay and Dearness Allowance in respect of every employee without any ceiling of Rs.6,500/- or Rs.15000/-. During 2013, the CAG conducted an audit and raised a query with regard to the limiting of employers contribution to the statutory limit of 12% of Rs.6,500/-. The Govt of Kerala issued an order directing the appellant to confine the employer's contribution to Rs.6,500/-. The unions challenged the above said order before the Hon'ble High Court of Kerala and Hon'ble High Court stayed the implementation of the said order. The appellant was facing acute financial crisis during the period 11/2013 to 05/2015. Due to financial crisis as well as considering the Govt order dt.25.01.2013, the employer's contribution was restricted to the salary of Rs.6,500/- during the above period. The respondent did not accept the above action as the order dt.25.01.2013 of Govt of Kerala is stayed by Hon'ble High Court of Kerala.

3. The respondent filed counter denying the above allegations. The appellant defaulted in remitting regular contribution for the period from 11/2013 to 05/2015. The Enforcement Officer appointed under Sec 13(1) of the Act reported the default of the establishment as per Exbt.R1. Hence an enquiry U/s 7A of the Act was initiated. A representative of the

appellant appeared before the 7A authority and filed an objection dt.01.10.2015 which is marked as Exbt.R2. The only contention raised by the appellant before the respondent authority was that certain remittances already made by the appellant was not considered by the Enforcement Officer. The representative of the appellant accepted the remaining dues and did not raise any contention regarding payment of employer's share on actual salary. A copy of the daily order sheet dt.10.02.2016 which is marked as Exbt.R3 will prove that no contention regarding employer's contribution on actual salary was raised before the respondent authority U/s 7A of the Act. It is an admitted fact that the Govt order restricting the employer's share of contribution to Rs.6,500/- was stayed by the Hon'ble High Court of Kerala vide order dt.28.02.2013 in W.P.(C) 5639/2013 filed by the KEL Employees' Union(CITU). Hence there is no illegality in the order issued by the respondent authority.

4. The appellant establishment was contributing 12% of the actual salary as employer's share of contribution. According to the learned Counsel for the appellant consequent to CAG audit and a subsequent order no.17326/D1/12/ID dt.25.01.2013 issued by Govt. of Kerala, the employer's share of provident fund contribution was restricted on a salary of Rs.6,500/-. This order is stayed by Hon'ble High Court of Kerala in W.P.(C) 5639/2013. The respondent initiated action U/s 7A of the Act

because there was default in remittance of provident fund contribution for the period from 11/2013 to 05/2015. It is seen from Exbt.R1 that even the employees' share of contribution and administrative charges were not paid by the appellant during the relevant point of time. In the proceedings U/s 7A, the appellant was represented and the representative filed Exbt.R2 representation. On a perusal of Exbt.R2, it is seen that the only objection raised during the 7A proceedings was with regard to non accounting of certain payments already made by the appellant. This is also clear from Exbt.R3 daily order sheet. On a perusal of the impugned order, it is very clear that the pleadings regarding the Govt or Kerala order restricting the employer's share of contribution to Rs.6,500/- was not at all raised before the respondent authority. Since the appellant has not raised the issue in the proceedings U/s 7A and was not answered by the respondent the same cannot be raised for the first time in this appeal. As rightly pointed out by the learned Counsel for the respondent, the order dt.25.01.2013 by Govt of Kerala is already stayed by Hon'ble High Court of Kerala in W.P.(C) 5639/2013.

5. Considering the facts and circumstances of this case, I am not inclined to interfere with the orders of the respondent U/s 7A of the Act.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer