



सत्यमेव जयते

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

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

(Monday the 19th day of October, 2020)

APPEAL No.255/2018
(Old No.A/KL-33/2017)

Appellant : M/s.Arenco Catering
Babu Complex
Treasury Building, Feroke
Kozhikode - 676631

By Adv.T Sheela

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kozhikode - 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 27.02.2020 and this Tribunal-cum-Labour Court on 19.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KKD/23677/ENF-2(5)/2016-17/4925 dt.25.11.2016 assessing dues U/s 7A of EPF & MP Act, (hereinafter referred to as 'the Act') for the defaulting period from 05/2014 to 06/2016. The total dues assessed is Rs.14,57,265/-.

2. The appellant is a partnership firm engaged in railway catering business. The appellant establishment is covered under the provisions of the Act in 2005. The appellant also started units at Calicut and Shornur. Since the employment strength came below the statutory limit, the appellant stopped compliance under the provisions of the Act during 2014-16. No contribution was also deducted from the employees. No Muster roll or wages register were maintained by the appellant during the relevant period. No officer inspected the appellant establishment during the relevant point of time and pointed out that the appellant is liable to remit provident fund contribution. The appellant received a notice from the respondent and accordingly authorised a consultant to represent the appellant and informed the respondent that no employees' share is deducted from the salary of the employees during the relevant point of time. It appeared that the consultant has not informed the respondent regarding the instructions given to him. No Enforcement Officer has visited any of the business premises of the appellant or inspected any records of the appellant and never prepared any mahazar either on 04.07.2016 or 08.07.2016. The appellant did not hand over any records to the consultant to be presented before the respondent during the 7A hearing. In spite of that, it is stated in the impugned order that the consultant produced wages register for the period 05/2014 to 06/2016 for the units in

Shornur, Kozhikode and Feroke. The appellant denied the above facts. No inspection was conducted in the premises of the appellant establishment on 08.07.2016 by any of the Enforcement Officers and such a reference in the impugned order is denied by the appellant. It is very clear that the impugned order assessing the dues is issued on the basis of the admission made by the consultant of the appellant and not on the basis of any records produced by him. The appellant is not provided with copies of the alleged inspection report dt.08.07.2016 or the alleged mahazar dt.04.07.2016 relied upon by the department for fixing the liability.

3. The respondent filed counter denying the above allegations. The appeal is filed beyond the statutory limit prescribed under Rule 7(2) of EPF Appellate Tribunal Procedure Rules 1997. The appeal is filed after expiry of a period of 115 days. Hence the appeal is to be rejected on that ground alone.

4. The appellant defaulted in payment of dues from the wage month 05/2014 to 06/2016 in respect of employees working in Calicut, Shornur and Feroke unit. Hence a notice was issued to the appellant U/s 7A of the Act directing the appellant to appear in person or through an authorised representative on 24.08.2016. Sri.Upendran P. attended the proceedings with authorisation from the appellant. He also produced the wage registers for the period from 05/2014 to 06/2016 for the units in Shornur, Kozhikode

and Feroke. The details in the registers agreed with the dues reported by the Enforcement Officer Calicut and Palakkad who verified the records of the establishment and reported the outstanding dues. The dues were determined on the basis of the records produced by the representative of the appellant and the report and mahazar submitted by the Enforcement Officers. The claim of the appellant that the appellant establishment is not covered under the Act since the employment strength has gone below 20 was strongly objected to by the respondent in view of Sec 1(5) of the Act. The pleading of the appellant that the consultant engaged by the appellant had not carried out his instructions and was not authorised to produce any records is denied by the respondent. The respondent also produced the letters of authorisation given by the appellant to the consultant dt.24.08.2016 and 26.10.2016 and are marked as Exbt.R1 & R2. The authorised representative of the appellant appeared before the respondent on 22.11.2016 and produced the wage registers of the appellant units at Shornur, Calicut and Feroke. Since the details of the employees in the registers agreed with the report submitted by the Enforcement Officers the respondent issued the impugned order taking into account the documents produced by the appellant. The dues were finalised on the basis of the records produced by the appellant and the report and mahazar of the Enforcement Officers. The respondent also denied the

allegation of the appellant that the Enforcement Officers of the respondent never visited the appellant establishment.

5. The stand taken by the appellant in this appeal that his authorized representative has not communicated his instruction to the respondent and that he has not produced any records before the 7A authority and that none of the Enforcement Officers visited his units at any point of time is very strange and is equally unfortunate. The respondent has denied all these allegations and it is very clear that the appellant is trying to divert the attention and delay the remittance of provident fund contribution in respect of his employees. The only valid contention taken by the learned Counsel for the appellant is with regard to non furnishing of copies of the inspection reports of the Enforcement Officers. The learned Counsel for the respondent strongly refuted the allegation and argued that the reports of the Enforcement Officers were acknowledged by the appellant. However during the course of the argument the learned Counsel for the appellant fairly conceded that the appellant is not disputing the assessment with regard to Calicut and Feroke units. According to him, the dues for those units come to Rs.9,54,000/- (approx.). He also submitted that he has got strong reservations against the assessment made against the Shornur unit. Having heard both the Counsels it is felt that there is no reason for this Tribunal to interfere with the impugned

order. However it is felt that if the appellant remits the admitted amount of Rs.9,54,000/- in the first instance, the respondent can be directed to re-assess the amount in respect of Shornur unit for the period 05/2014 to 06/2016.

6. Considering the facts, circumstances and pleadings in this case, the appeal is disposed of with the following directions.

1. The appellant shall remit the admitted amount of Rs.9,54,000/- within a period of 2 months from the date of receipt of this order.
2. On receipt of the above Rs.9,54,000/- from the appellant the respondent shall initiated a fresh enquiry U/s 7A of the Act to assess the dues in respect of Shornur unit.
3. The records, mahazars if any in respect of the Shornur unit shall be served on the appellant before finalising the dues for the Shornur unit.
4. If the appellant fails to remit the admitted amount of Rs.9,54,000/- within 2 months as stipulated above, the respondent is at liberty to recover the whole amount as per the impugned order.
5. The amount of Rs.1,50,000/- which is already deposited as per Sec 7(O) of the Act shall be adjusted or refunded after the finalisation of the enquiry U/s 7A of the Act.

Sd/-
(V. Vijaya Kumar)
Presiding Officer