



सत्यमेव जयते

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

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

(Thursday the 24<sup>th</sup> day of December, 2020)

**APPEAL No.33/2019**

(Old No.807(7)2014)

Appellant : M/s.Thenali Electronic Company  
6/401-C, Ground Floor  
K. K. Building, Ayininada Bund Road  
Maradu, Kochi - 682034

By Adv.V. Krishna Menon

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Kaloor  
Kochi – 682017

By Adv.Sajeev Kumar K.Gopal

This case coming up for final hearing on 25.11.2020 and this Tribunal-cum-Labour Court on 24.12.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/19866/ENF-III(2)/2014/4566 dt.21.07.2014 assessing dues on the DA component of wages U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 03/2010 to 01/2013. The total dues assessed is Rs.2,22,256/-.

2. The appellant is a partnership firm engaged in the business of A/c repair. The appellant deputed its employees to the clients who had executed agreement with or avail the service of the appellant for repair/service. The appellant pays wages as basic + DA, HRA, TA and overtime to the employees. The appellant pays a fixed amount towards these allowance. The appellant remits contribution on basic + DA regularly. The Enforcement Officer of the respondent inspected the appellant establishment on 23.04.2013. The Enforcement Officer reported that the appellant failed to remit provident fund dues for DA paid to its employees and therefore defaulted in payment of provident fund dues. The respondent initiated an enquiry U/s 7A. The appellant appeared before the respondent and filed a letter dt.16.01.2014, a copy of which is produced and marked as Annexure A2. Along with the statement the appellant also produced the copies of wage registers for the period 03/2011 to 03/2013 and those documents are marked as Annexure A3. The respondent failed to consider the copies of wage registers for the period 03/2011 to 03/2013 produced by the appellant. The respondent has really calculated the provident fund dues in respect of HRA, TA and overtime which is against the provisions of the Act and Schemes thereunder.

3. The respondent filed counter denying the above allegations. As per the report of the Enforcement Officer, who verified the records of the appellant

establishment on 23.04.2013, the appellant was paying only basic and DA and provident fund contribution is paid only on basic wages. Hence an enquiry was initiated U/s 7A of the Act. The appellant was represented in the enquiry and during the course of the enquiry, it was submitted that appellant establishment was paying basic + DA, HRA, TA and overtime allowance to their employees. It was also submitted by the representative that some clerical mistake has happened while preparing the pre-printed wage register. The principle adopted by the employer is pure wilful evasion of the statutory provision resulting in denial of social security benefits to its employees. The Annexure A2 and A3 copies of computerised wage register submitted by the appellant shows two columns., one for basic and DA and other for HRA and travelling allowance. According to the appellant, they are paying basic and DA to their employees in addition to allowances like HRA, travelling allowance and overtime allowance. But the wage register submitted by the establishment during the coverage shows that the wage component was only basic and DA. A copy of the wage register for 12/2003 is produced and marked as Exbt. R1. It can be noticed that the wage register produced by the appellant during 7A is fabricated to include HRA and travelling allowance. In most of the cases it can be seen that the employees are paid basic and DA which is much less than the amount paid as HRA and travelling allowance. However the appellant is paying ESI contribution

on total wages. In **Rajasthan Prem Krishan Goods Vs RPFC**, AIR 1997 SC 58 the Hon'ble Supreme Court held that the Regional Provident Fund Commissioner has the authority to pierce the veil and read between the lines within the outwardness of the two apparents. The respondent noticed that the wage registers produced by the appellant were fabricated to include in the basic column the DA and in the DA column they have put HRA + travelling allowance. Copies of wage registers for 04/2012, 07/2012 and 06/2012 are produced and marked as Exbt. R2, R3 and R4 respectively. These documents would clearly shows that the subsequent splitting of wages by the appellant is a clear subterfuge.

4. The only dispute in this appeal is with regard to the DA component in the assessment order issued by the respondent. According to the appellant the DA component is actually HRA, travelling allowance and overtime allowance. But the documents produced by the appellant at the time of coverage will clearly show that the appellant was paying only basic and DA at the time of coverage and the contribution that the appellant was paying in respect of its employees was confined to only basic wages. When the enquiry U/s 7A was initiated, the appellant produced a new set of wage registers which is also produced in this appeal wherein only two components are shown. The 1<sup>st</sup> component being basic + DA and the second component being HRA and TA.

Though the appellant claims that overtime allowance was also being paid, the same is not reflected in the wage register produced by the appellant in these proceedings. As rightly pointed out by the learned Counsel, in majority of the cases basic + DA is much lower than the HRA and TA. It is clear from the evidence available, that the DA column in the original wage register is converted HRA + TA is to claim exclusion. Even otherwise HRA +TA is strange combination of allowances to be clubbed into one. The appellant failed to produce any terms of agreement with the employees under which the above bifurcation is done by him. I accept the view taken by the learned Counsel for the respondent that in the new wage register that is produced by the appellant in these proceedings, the basic column is altered to show that it is basic and DA and the DA column is altered to make it HRA and TA. It is a clear subterfuge and it is not possible to accept the claim of the appellant that it was only a mistake while incorporating the wages in the wage register. Exbt.R1 produced by the respondent will clearly substantiate the subterfuge. It is clear that the appellant has not come to this Tribunal with clean hands.

5. Considering the pleadings, evidence and arguments in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer