



सत्यमेव जयते

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

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

(Thursday the 18th day of March, 2021)

**APPEAL No.361/2018
(Old no.167(7)2002)**

Appellant : Shri.K.J.Joseph
Former Managing Partner
M/s.Cherupushpam Textiles
Main Road, Pala
Kottayam

By Adv.C.S. Ajith Prakash

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Thirunakkara
Kottayam – 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 06.01.2021 and this Tribunal-cum-Labour Court on 18.03.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/9947/ENF-1(1)/2002/18671 dt.24.01.2002 deciding continued applicability and also assessing dues for the period from 07/1983 to 11/2001 U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act'). The total dues assessed is Rs.4,05,823.25.

2. The appellant is a firm running a textile shop. Originally the firm was constituted in the name and style of 'K.J.Jospeh-Cherupushpam Textiles' as per partnership deed dt.01.04.1980. The appellant employed only 5 employees at that time. The provisions of the Act were made applicable to the appellant establishment alleging that the appellant establishment was employing more than 20 employees. The respondent initiated action U/s 7A and assessed dues for an amount of Rs.21,984.80 vide order dt.21.03.1984. The appellant challenged the above order in O.P. no.5499/1984 before the Hon'ble High Court of Kerala. The Single Judge of Kerala High Court allowed the appeal and quashed the order U/s 7A. The respondent filed Appeal no.1101/1998 which was allowed by the Division Bench. The appellant remitted the contribution for the period from 07/1981 to 06/1983. The appellant establishment was closed on 26.05.1984 and the employees were relieved after paying statutory compensation. Thereafter the firm was reconstituted with five partners by partnership deed dt.01.04.1991, a copy of which is produced and marked as Annexure A1. The business of the new firm started w.e.f. 01/1992. According to the respondent vide Annexure A2 order, " the appellant re-opened in 01/1992 in the name and style of 4 units namely Cherupushpam Textiles with 4 employees, Cherupushpam Saree Kendra with 4 employees, Cherupushpam Depot with one employee and Cherupushpam Enterprises with 4 employees ".

The above statement is factually incorrect. The appellant filed an objection dt.09.10.2001, a copy of the same is produced and marked as Annexure A3. The Enforcement Officer attached to the respondent's office issued a notice calling for production of records of the 4 partnership firms vide Annexure A4. The appellant sent a reply dt.02.01.2002 stating that Cherupushpam Textiles has no connection with any other business and it has no branches. Copy of the reply is marked as Annexure A5. As on 31.03.2000 the appellant was having only 7 employees and list of employees is produced and marked as Annexure A6. The appellant firm was again reconstituted in April 2000. The name and style of reconstituted firm is 'The new Cherupushpam Textiles'. A copy of the new partnership deed dt.01.04.2000 is produced and marked as Annexure A7. A representative of the appellant appeared before the respondent authority U/s 7A and produced all the records summoned by the respondent. The respondent also indicated that the authorised representative of the establishment attended the enquiry and produced records. However the respondent did not consider the documents produced and there is no comment in the impugned order regarding the documents produced by the appellant. The appellant was not given any further opportunity to produce evidence. Hence the appellant is producing the affidavit of the Manager of the establishment from its inception and also the affidavits of the proprietors of Cherupushpam Agencies,

Cherupushpam Saree Kendra, Cherupushpam Depot and Cherupushpam Enterprises to show that those establishments have no connection with the appellant. These affidavits are produced and marked as Annexure A9 to A13. There was a complete failure on the part of the respondent with regard to natural justice. The appellant was not provided with a copy of the report of the Enforcement Officer and even the contents of the report of the Enforcement Officer was not disclosed to the appellant.

3. The respondent filed counter denying the allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 13.06.1981. The appellant establishment was covered on the strength of the employees list furnished by the Managing Partner of the appellant establishment. According to the partnership deed of the erstwhile " K.J.Joseph-Cherupushpam Textiles", Sri. K.J.Joseph, Katherine Jose and Mrs.Annamma Joseph are partners. The appellant failed to comply with the provisions of the Act. Therefore an enquiry U/s 7A of the Act was initiated and proceedings issued assessing dues for the period from 07/1981 to 06/1983. The appellant challenged the order in W.P.(C) no.5499/1984 before the Hon'ble High Court of Kerala challenging the applicability of the Act. The Single Bench allowed the writ petition and quashed the assessment order. The respondent filed Writ Appeal no.1101/1988 and the Division Bench of the Hon'ble High Court set aside the judgment of the Single

Judge and upheld the coverage. The appellant again defaulted in compliance and therefore an enquiry was initiated U/s 7A and assessed dues for the period from 07/1983 to 11/2001. The appellant submitted that the appellant establishment was closed for the period from 05/1984 to 12/1991 and minimum administrative charges were paid. The review filed by the appellant was rejected as the appellant failed to produce any new or important evidence. The appellant challenged the order before the Hon'ble High Court in O.P. no.11367/2002 and the Hon'ble High Court admitted the petition on the condition of remitting Rs.75,000/- within a period of 6 weeks. The OP was finally disposed of with a direction to the appellant to approach EPF Appellate Tribunal. The contention of the appellant is that the appellant establishment was closed on 26.05.1984 and reopened after reconstitution in 04/1991, is contrary to facts. An Enforcement Officer of the respondent visited the appellant establishment on 24.10.1985 and the management failed to produce any records on the ground that the writ petition is still pending. The Enforcement Officer again visited the establishment on 07.10.1986 and submitted his report wherein it is clearly stated that the establishment is not complying with the provisions of the Act and Schemes. The Enforcement Officer also visited the establishment on 22.08.1986 and submitted his report. The Enforcement Officer also conducted an inspection of the appellant establishment on 23.09.1998 and submitted a

report. The appellant establishment was again inspected on 10.11.2000 and submitted its report on 13.11.2000 wherein the salaries, allowances and stipend paid to trainees were indicated. He also produced the balance sheet and ledger for the period from 1994-95 to 03/1999. Attendance registers for 09/2000 to 10/2000 and wage registers for 06/2000 to 10/2000 was also produced. It was also reported that there is a dissolution of partnership on 01.04.2000 and a new partnership is formed on the same date. As per the dissolution deed and the new partnership deed, Sri.K.J.Joseph ceased to be a partner in the said establishment. The new partnership is also doing the same business as that of the earlier partnership. Sri.Josekutty Joseph is the new managing partner. It is seen that the dissolution deed and the partnership deed are on the same day which shows the continuity of the establishment. Change of one or more partners or change in name of the establishment cannot be treated as forming a new establishment. The contention of the appellant that old establishment ceased to function is contrary to the facts.

4. It is seen that the appellant was covered under the provisions of the Act w.e.f. 30.06.1981. The appellant failed to comply under the provisions of the Act and therefore an enquiry U/s 7A of the Act was initiated. Under the 7A enquiry, the respondent decided the applicability of the Act on the basis of the employment strength given by the appellant under his seal and signature. The

dues for the period 07/1981 to 06/1983 was also assessed. The appellant challenged the said order before the Hon'ble High Court and the Single Bench of the Hon'ble High Court quashed the said order. In appeal, the Division Bench of the High Court allowed the appeal and upheld the order issued by the respondent U/s 7A of the Act. The appellant again failed to comply with the provisions of the Act and therefore an enquiry U/s 7A of the Act was initiated for assessing the dues for the period from 07/1983 to 12/1991. It is seen that as per the Annexure A2 daily order sheet, the respondent considered the closure of the appellant establishment and also reopening in 01/1992 as 4 different firms. Thereafter the appellant vide Annexure A3 letter dt.09.10.2001 contested the finding of the respondent in Annexure A2 daily order sheet and also has taken a view that the other units are independent units and has got nothing to do with the appellant partnership firm. The appellant also filed Annexure A5 dt.02.01.2002 stating that "Cherupushpam Textiles" has no connection with any other business at Pala and it has no branches. They also provided the details of the employees from 01.01.1992 when they restarted the business. It can be seen that there was indeed a dispute regarding the coverage of the appellant establishment before the 7A authority. Though the proceedings started on the right note, the final order is totally silent regarding the applicability dispute raised by the appellant and considered by the respondent,

in the initial stage of the Sec 7A enquiry. The appellant has also raised a contention that the assessment is made on the basis of the reports of Enforcement Officer. However no copy of the report is given to the appellant at the time of enquiry. The appellant also pleaded that he was not given adequate opportunity to produce further evidence regarding the new firms alleged to be clubbed along with the appellant unit. The appellant therefore produced certain partnership deeds in this appeal. It is not possible to finally decide the issue of clubbing or continued applicability in this appeal in the absence of sufficient evidence.

5. It is one of the oldest cases where the dispute regarding the coverage is pending for quite a long time. The dispute regarding applicability was once decided by the Division Bench of the Hon'ble High Court of Kerala. However the subsequent closure of the establishment and reconstitution of the partnership etc., are required to be considered in detail and the applicability or the continued applicability is required to be decided before quantifying the dues. The respondent is therefore directed to call for the records to decide the applicability or continued applicability and assess the dues after issuing notice to the appellant at the earliest possible. It is also seen that there is a dispute regarding clubbing of 4 bifurcated units of the original appellant establishment. The respondent shall also decide the clubbing of these units by applying the

standard tests evolved by the Hon'ble Supreme Court as well as various High Courts.

6. Considering the facts, pleadings and evidence in this appeal, I am not inclined to uphold the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the appellant is directed to decide the applicability/continued applicability/clubbing within a period of 6 months of receipt of this order after issuing notice to the appellant. If the appellant fails to produce the required documents, the respondent is at liberty to draw adverse inference. The deposit made by the appellant as per the directions of the Hon'ble High Court shall be adjusted after finalisation of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer