



सत्यमेव जयते

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

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

(Tuesday the 2nd day of March, 2021)

APPEAL No.497/2019
(Old No.74(7)2016)

Appellant : M/s.Ideal Footwear Pvt Ltd
No.227E, Industrial Growth Centre
INKEL, Melmuri P.O.
Malappuram - 676519

By Adv.Philip Mathew & M. A. Shaji

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam P.O.
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for final hearing on 27.01.2021 and this Tribunal-cum-Labour Court on 02.03.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KK/1328883/ENF-3(5)/2015-16/9249 dt.22.12.2015 assessing dues on various allowances U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 07/2014 to 05/2015. The total dues assessed is Rs.9,87,583/-.

2. The appellant is a private limited company registered under the Companies Act, 1956. The appellant is involved in footwear manufacturing. The appellant is covered under the provisions of the Act. The appellant enrolled all the employees to provident fund scheme and has been remitting contribution as required U/s 2(b) and Sec 6 read with sub Para 3 of Para 29 of the Employees Provident Fund Scheme. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment. The Enforcement Officer did not report any issue to the appellant and also failed to make any observations in the inspection book provided to him. The respondent thereafter issued a summons dt.15.09.2015 alleging that there was evasion in remittance of provident fund contribution for the period from 07/2014 to 05/2015. The appellant was also directed to produce various documents on the date of enquiry on 22.10.2015. The enquiry was adjourned to 18.11.2015. Thereafter the enquiry was adjourned on many occasions and the same was adjourned for administrative reasons. The appellant was in complete dark regarding the issues on which the enquiry was being conducted and therefore vide Annexure A4 letter dt.31.12.2015, requested the respondent to provide a copy of the report of the Enforcement Officer on the basis of which the enquiry was initiated. The report of the Enforcement Officer was not

provided to the appellant. On 15.12.2015 the appellant produced all the records called for by the respondent authority. The respondent officer handed over those records to the Enforcement Officer to confirm whether his report is based on the records produced by the appellant. The Enforcement Officer confirmed the documents and thereafter the respondent informed the appellant that he failed to deduct contribution on gross wages. Without considering any of the representation of the appellant, the respondent issued the impugned order. The impugned order is not a speaking order. A non reasoned order is issued by the respondent in complete violation of principles of natural justice. In **M/s.Kesarwani & Co Vs RPF**, 2006 (6) ALJ 141 (All) the Hon'ble High Court of Allahabad held that determination of amounts payable, without discussing its basis and without giving adequate opportunity to employer to defend his case and adduce evidence, is illegal. As per the provisions of Manual of Inspectors, at Para 12.16, the observations made during the inspection visit should be explained to the person responsible for the affairs of the establishment duly recording the short comings in the inspection notebook. In this case the Enforcement Officer failed to make any observation regarding the issues noticed by him during his inspection. In **Damjibhai L. Shah Vs RPF**, 1991 (1) CLR 510 (Bom) the Hon'ble High Court of Bombay held that where the

Regional Provident Fund Commissioner fails to explain the documents or the evidence on the basis of which the conclusion was arrived at, the show cause notice has to be set aside.

3. The respondent filed counter denying the above allegations. The Enforcement Officer attached to the office of the respondent on routine inspection found that the appellant split a major portion of the salary paid to the employees as other allowances in order to reduce the liability in payment of contribution under the Scheme provisions. The appellant remitted contribution and administration charges only on a small portion of the wages paid to the employees. Sec 2(b) defines the term 'basic wages' and also elaborates the allowances which are excluded from the term 'basic wages'. The appellant produced the records called for by the respondent in the enquiry and it was seen that the records produced by the appellant tallies with the report produced by the Enforcement Officer. It was therefore concluded that there was evasion of wages for the period from 07/2014 to 05/2015. The appellant remitted the contribution in respect of its employees only for basic wages and DA. In **Group 4 Security Guards Vs RPFC**, 2004 (2) LLJ 1142 the Hon'ble High Court of Karnataka held that the Provident Fund Commissioner can examine the pay structure to determine whether splitting of wages alleged under agreement was only

a subterfuge adopted with a view to avoid compliance with the provisions of the Act. In **Gujarat Cypromet Limited Vs APFC**, 2005 LAB IC 422 the Hon'ble High Court of Gujarat held that the term basic wages is defined as to mean all emoluments which are earned by an employee. In **Hindustan Lever Employees Union Vs RPF and another**, 1995 (2) LAB LJ 279 the Hon'ble High Court of Mumbai held that the term basic wages as defined U/s 2(b) of the Act, unless the payments falls in any one of the specifically mentioned exempted category, every emoluments which is earned by employee while on duty or on leave or on holidays in accordance with the terms of contract of employment and which are paid or payable in cash must be included within basic wages.

4. The learned Counsel for the appellant raised three issues in this appeal. The first issue is with regard to non communication of the report of the Enforcement Officer on the basis of which the enquiry U/s 7A of the Act was initiated. The second issue is with regard to the nature of the order being a completely non speaking one. The 3rd issue is with regard to the exclusion/inclusion of certain allowances from the definition of basic wages. With regard to the first issue that the report of the Enforcement Officer was not provided to the appellant, it is seen that the allegation of the appellant is not denied by the respondent. It was also alleged by the

learned Counsel for the appellant that the Enforcement Officer did not make any observation in the inspection book maintained by the appellant in his premises. As pointed out by the learned Counsel, it is mandatory as per the Manual of Inspectors that the Enforcement Officer shall make his observations in the inspection book. From the above it is very clear that the reason for initiating an enquiry U/s 7A is not disclosed to the appellant. It is a settled legal position that if an enquiry is initiated on the basis of a report submitted by an Enforcement Officer of the respondent, a copy of the same shall be provided to the appellant. Non disclosure of the report of the Enforcement Officer to the appellant is a clear violation of the principles of natural justice and it is not legally possible to sustain the order on that ground alone. The 2nd issue raised by the learned Counsel for the appellant is with regard to the nature of the impugned order. On a perusal of the impugned order it is seen that the enquiry U/s 7A was initiated since the appellant establishment defaulted in payment of various dues on evasion of wages in respect of the employees under the Act and Schemes framed thereunder. As per the impugned order a representative of the appellant attended the enquiry and the Enforcement Officer represented the department and on the basis of the inspection report dt.03.09.2015 and also on the basis of the records produced by the appellant

establishment, the respondent assessed the dues. From the order it is not clear as to what are the wage components which are included in the assessment. The reasons for the inclusion of those components or allowances and if any component or allowance is excluded, the reason for exclusion of the same are not available in the impugned order. It is a classic case of a non speaking order which cannot be legally accepted in view of the various decisions by the Hon'ble Supreme Court as well as the High Courts. In a recent decision in **Standard Furniture Vs EPF Appellate Tribunal and others**, W.A. no.996/2015 the Division Bench of Hon'ble High Court of Kerala castigated the quasi judicial authority under the Act for not issuing a speaking order without disclosing the reasons for the assessment. Hence it is not possible to legally accept the impugned order being a clear violation of the instructions given by the judicial authorities that the order issued by the quasi judicial authorities shall be speaking orders disclosing the reasons for arriving at the conclusion. The 3rd issue raised by the learned Counsel for the appellant is with regard to assessment of dues on various allowances. Since the impugned order is totally silent on the allowances on which the assessment is made and reasoning why those allowances will attract provident fund deduction, I am not inclined to make any comment on the said issue. The respondent shall examine the issues in view of

various authorities and come to a legally valid conclusion whether such allowances will attract provident fund deduction, before quantifying the dues.

5. Considering the facts, circumstances and pleadings in this appeal, it is not legally possible to sustain the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-assess the dues, if required, after issuing notice to the appellant, within a period of 3 months. The respondent shall send a copy of the report of the Enforcement Officer along with the notice and also shall issue a speaking order as discussed above.

Sd/-

(V. Vijaya Kumar)
Presiding Officer