



सत्यमेव जयते

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

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

(Monday the 26th day of October, 2020)

APPEAL No.525/2019

(Old no.281(7)2009)

Appellant : M/s.Suntec Tyres Ltd
P.T.Manuel Road
Thiruvampady P.O.
Thrissur - 680022

By Adv.C.B.Mukundan

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

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 05.10.2020 and this Tribunal-cum-Labour Court on 26.10.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/15501/PD/T(1)/2003/27803 dt.8.12.2003 imposing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 10/1997 to 03/2000. The interest demanded U/s 7Q of

the Act and the show cause notice issued U/s 8 of the Act is also being challenged in this appeal. The total damages assessed is Rs.1,16,341/-.

2. The interest demanded U/s 7Q and notice of recovery U/s 8 of the Act are not appealable as there is no provisions U/s 7(I) to challenge those orders.

3. The respondent in the counter affidavit filed by them raised a preliminary issue that the appeal is barred by limitation as the same is filed after 5 years after receiving the impugned order. When the matter was taken up for hearing the learned Counsel for the respondent also raised the question of limitation as a preliminary issue. It is seen that the impugned order is issued on 08.12.2003 and the present appeal is filed on 19.05.2009. There is a delay of more than 5 years in filing the appeal. The learned Counsel for the appellant argued that the appellant establishment was closed during the period 1998-2000 and the impugned order was not received by the appellant. However the appellant failed to prove his contentions regarding the delayed receipt of the impugned order as well as regarding the closure of the establishment during the relevant point of time. The learned Counsel for the respondent argued that the claim of the appellant that he was not in receipt of the notice of hearing U/s 14B of the Act was disproved by the fact that all the notices issued by the respondent were acknowledged by the appellant and it is proved through Exbt. R2a,

R2b, R3a, R3b and also Exbt. R4a and R4b. It is seen that all the notices issued by the respondent summoning the appellant for Sec 14B hearing was acknowledged by the appellant and therefore it is not possible to accept the pleading of the learned Counsel for the appellant that he was not aware of the pendency of the 14B proceedings.

4. As per Rule 7(2) of EPF Appellate Tribunal (procedure) Rules 1997 which is still applicable for filing of appeals under Section 7(l) of EPF & MP Act, 1952, any person aggrieved by an order passed under the Act, may prefer an appeal to the Tribunal within 60 days from the date of issue of order provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. As per the above provision, appeal from an order issued under the provisions of the Act need to be filed within 120 days. There is no power to condone delay beyond 120 days under the provisions of the Act.

5. The Hon'ble High Court of Kerala considered the issue in **Dr.A.V.Joseph Vs APFC**, 2009 (122) FLR184. The Court observed that

“maximum period of filing appeal is only 120 days from the date of impugned order. When the statute confers the power on the authority to condone the delay only to a limited extend, it can never

be widened by any court contrary to the intention of the law makers”.

The Hon’ble High Court of Delhi in **APFC Vs Employees Appellate Tribunal**, 2006 (108) FLR 35 held that in view of the specific provisions under Rule 7(2) the Tribunal cannot condone the delay beyond 120 days. As a general proposition of law whether the Courts can condone the delay beyond the statutory limit provided under a special Acts was considered by Hon’ble Supreme Court in **Commissioner of Customs & Central Excise Vs Hongo India Pvt Ltd**, (2009) 5 SCC 791 and held that whenever a statutory provision is made to file an appeal within a particular period the Court shall not condone the delay beyond the statutory limit applying Limitation Act. In **Oil & Natural Gas Corporation Ltd Vs Gujarat Energy Transmission Corporation**, (2017)5 SCC 42 the Hon’ble Supreme Court held that “the Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and therefore, the prescription with regard to the limitation has to be the binding effect and same has to be followed, regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provision and policy of legislation. Therefore it is uncondonable and cannot condone taking recourse to Article 142 of the

constitution". The Hon'ble High Court of Patna considered the implication of the limitation U/s 7(I) of the EPF & MP Act read with Rule 7(2) of Employees Provident Fund Appellate Tribunal Procedure Rule, 1997 in **Bihar State Industrial Development Corporation Vs EPFO**, (2017) 3 LLJ 174. In this case, the Employees Provident Fund Appellate Tribunal, New Delhi rejected an appeal from an order issued by Regional Provident Fund Commissioner, Bhagalpur on the ground of limitation. The Hon'ble High Court after examining various authorities and provisions of law held that,

"Para 15. Thus in view of the fact that the limitation is prescribed by specific Rule and condonation has also to be considered within the purview of the Rule alone and the provision of Limitation Act cannot be imported into the Act and Rules. This Court is of the view that the Tribunal did not had the powers to condone the delay beyond the period of 120 days as stipulated in Rule 7(2) of the Rules. "

The Hon'ble High Court of Kerala also examined the issue whether the EPF Appellate Tribunal can condone the delay beyond 120 days in **Kerala State Defence Service Co-operative Housing Society Vs Assistant P.F.Commissioner**, 2015 LLR 246 and held that the employer is precluded from approaching the Tribunal after 120 days and Section 5 of Limitation Act, 1963 is not applicable to proceedings before the Tribunal. In **M/s.Port**

Shramik Co-operative Enterprise Ltd Vs EPFO, 2018 LLR 334 (Cal.HC), the Hon'ble High Court of Calcutta held that the limitation provided under Rule 7(2) of the Appellate Tribunal(Procedure) Rules, 1997 cannot be relaxed. In **EPFO represented by Assistant P.F. Commissioner Vs K. Nasiruddin Biri Merchant Pvt Ltd**, 2016 LLR 367(Pat.HC), the assessment of dues U/s 7A of the Act to the tune of Rs.3,36,30,036/- was under challenge. EPF Appellate Tribunal condoned the delay in filing the appeal and set aside the order. The Hon'ble High Court of Patna set aside the order of the Tribunal holding that the Tribunal has no power to condone delay beyond 120 days.

6. In view of the various authorities cited above, I am not in a position to accept the argument of the learned Counsel for the appellant that since there is no specific exclusion in EPF & MP Act, 1952 the provisions of Limitation Act can be applied to condone delay. When we examine the Scheme of EPF & MP Act and various provisions as discussed above, it is very clear that the intention of the legislature is to exclude the provisions of Limitation Act by necessary implication. As already pointed out, when the Legislature prescribes certain period of limitation for filing appeals and further period of delay which can be condoned and the scheme of the Act necessarily implies exclusion of the provisions of Limitation Act, it is the duty of this Tribunal to give full effect to the same.

7. For the reasons stated above, I am not inclined to interfere with the impugned orders on the ground of limitation.

Hence the appeal is dismissed as barred by limitation.

Sd/-
(V. Vijaya Kumar)
Presiding Officer