



सत्यमेव जयते

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

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

(Monday the 22nd day of November, 2021)

**APPEAL No.641/2019
(Old no.224(7)2013**

Appellant : M/s.Tasty Nuts Industries
Kundara
Kollam -

By Adv.V. V. Suresh

Respondent : The Regional PF Commissioner-II
EPFO, Sub Regional Office
Parameswar Nagar
Kollam - 691001

By Adv.Pirappancode V.S.Sudheer &
Megha A.

This case coming up for final hearing on 09.08.2021 and this Industrial Tribunal-cum-Labour Court on 22.11 .2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KLM/1175/ENF-1(1)/2012/4966 dt.22.11.2012 deciding the eligibility of 41 employees to be enrolled U/s 7C of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') read with Para 26B of EPF Scheme.

2. The appellant establishment is covered under the provisions of the Act and is engaged in the processing of raw cashew nuts and sale of cashew kernels. Appellant and M/s.J.S. Cashew Exporters occupied the factory during the period from 01.01.2006-31.10.2008. The respondent initiated an enquiry U/s 7A and issued an order dt.03.01.2007 whereby an amount of Rs.60,349.05 was held payable by M/s.J.S.Cashew Exporters. A copy of the said order is produced and marked as Annexure A2. M/s.J.S. Cashew Exporters remitted the amount. Copy of the challan is produced and marked as Annexure A3. A squad of Enforcement Officers visited the cashew factory on 28.01.2009. In the absence of records, the squad submitted a report on presumptive wages. A true copy of the inspection report dt.04.02.2009 is produced and marked as Annexure A4. The appellant took a view that since the enquiry is pending and demanding further documents during the pendency of the 7A enquiry would tantamount to interference in the quasi judicial process. It was also informed that the appellant approached the Hon'ble High Court of Kerala in W.P. no.37985/2008 challenging the direction of the Enforcement Officer to produce the documents. The appellant employed 41 employees on different dates. Out of the 41 employees, 8 employees were exempted and for the remaining 33 employees the appellant remitted an amount of Rs.2353/- as

proportionate contribution on wages. A true copy of the challan dt.14.02.2009 is produced and marked as Annexure P5. In the written statement filed before the respondent authority, the appellant has taken a contention that the appellant had already remitted dues for the period from 01.04.2004-31.12.2005. Hence the provident fund authority cannot re-assess the dues for the same period. It was also pointed out that the appellant had already remitted the contribution in respect of 33 employees for the period they were employed. A copy of the letter dt.14.02.2009 is produced and marked as Annexure P6. The appellant produced all the documents called for by the respondent authority. A list of documents dt.27.01.2010 filed by the appellant before the respondent authority is produced as Annexure P7. Sec 7C authorized the respondent to re-assess the amount determined as per Sec 7A or Sec 7B if the provident fund authorities have reasons to believe that there are some more amount which escaped from the original assessment. The respondent authority converted an enquiry U/s 7C as enquiry under Para 26B which is not legally correct. As per Sec 7C, the respondent authority is entitled to pass orders "re-determining" the amount due from the employer.

3. The respondent filed counter denying the above allegations. An enquiry U/s 7C of the Act was necessitated because of the squad reports

dt.04.02.2009 and 01.02.2012 stating that the appellant establishment has not enrolled all the employees from the due date of eligibility. Therefore a notice dt.17.02.2009 was issued to the appellant U/s 7C of the Act directing the appellant to appear before the respondent authority on 03.03.2009 along with records facilitating assessment of dues payable by the appellant. An Advocate representing the appellant attended the hearing and requested for copies of information on the basis of which Sec 7C enquiry was initiated. In the meanwhile the appellant filed a writ petition before the Hon'ble High Court of Kerala against the enquiry. The Hon'ble High Court of Kerala allowed the respondent to continue the enquiry. The enquiry re-started on 20.05.2010 and adjourned on several occasion on the request of the appellant. On 24.02.2012 another Advocate attended the hearing and requested for copies of the inspection report which was already provided to the appellant. The appellant filed a written statement on 17.09.2012 stating that they have already produced all the documents before the respondent authority on 27.01.2010. But on enquiry it is revealed that the records have been produced before the Enforcement Officer and the same were returned to the Manager of the establishment. The Advocate appeared again on 10.10.2012 and stated that the appellant had already paid all the dues payable. On a physical verification of the appellant establishment, the squad of Enforcement Officers

found that 41 employees have not been enrolled as provident fund members on 28.01.2009 and this fact has not been denied by the appellant. Hence the enquiry initiated U/s 7C was converted to an enquiry U/s 26B and decided the eligibility of employees to be enrolled to the fund. Since the appellant failed to produce the documents for the relevant period from 04/2005 to 12/2005 the dues could not be assessed. It is relevant to pointed out that the squad of Enforcement Officers also arrived at the date of eligibility on the basis of the statement given by the employees, since the appellant failed to produce any documents for the relevant period.

4. A squad of Enforcement Officers of the respondent's office inspected the appellant establishment and submitted a report dt.04.02.2009 stating that 41 employees were not enrolled to the fund. They furnished the details of all these 41 non enrolled employees on the basis of physical verification of the appellant establishment. Since the appellant failed to produce the records, the squad of Enforcement Officers decided the date of eligibility to be enrolled on the basis of the oral statement given by those non enrolled employees, as 01.04.2005. Since the appellant failed to produce any record before the Enforcement Officers, they further gave a provisional assessment of dues on a presumptive basis. The respondent authority found that an enquiry U/s 7A had

already been finalised, assessing dues for the period from 04/2004 to 12/2005 and therefore initiated an enquiry U/s 7C of the Act to re-determine the dues for the non enrolled employees. The appellant failed to produce any records or documents before the respondent authority also, and therefore the respondent authority converted the enquiry into an enquiry U/s 7C read with Para 26B of EPF Scheme. After affording adequate opportunity to the appellant, the respondent authority issued an order deciding the eligibility of 41 employees to be enrolled to the fund w.e.f. 01.04.2005 on the basis of the squad report.

5. According to the appellant, they produced the relevant documents before the respondent authority and a copy of the list of documents is also produced along with the appeal as Annexure P7. However on perusal of Annexure P7, it is seen that the documents produced pertains to 2007-08 period whereas the relevant period of assessment was 2004-2005. The quantification of dues by the squad was done on presumptive wages since the appellant failed to produce the required documents. The respondent authority did not accept the quantification and only decided the eligibility of 41 employees to be enrolled to the fund. It is seen from the impugned order, as well as the squad report, that the quantification of dues by the squad of Enforcement

Officers was done on the basis of presumptive wages only because the appellant failed to produce any records before them. Further it is also seen that the respondent authority also could not quantify the dues since the appellant failed to produce any records before the respondent authority during the Sec 7C proceedings. Though the appellant has taken a stand that an earlier assessment made U/s 7A cannot be reopened probably realising the impact of Sec 7C, the same ground was not pressed in this appeal.

6. It is seen that the appellant filed a written statement dt.09.02.2009 against the squad report which is produced in this appeal as Annexure P6. In Annexure P6 the appellant has taken specific stand that out of the 41 employees, 8 employees are excluded in view of the fact that the provident fund account in respect of those 8 employees are already settled and the appellant also furnished the PPO numbers of the said employees. As per Para 2(f) of EPF Scheme, an excluded employee means an employee, who having been a member of the fund, withdrew the full amount of accumulations in the fund under Clause 'a' or 'c' of sub para 1 of Para 69. As per Para 69, a member may withdraw the full amount standing to his credit in the fund on retirement from service after attaining the age of 55 years. Hence it is clear from the above provisions that if the details furnished by the appellant

establishment is correct and if those 8 employees withdrew their provident fund on attaining the age of 55 years, they will have to be treated as excluded employees. Further the appellant has taken a stand that the other 33 employees were already enrolled to the fund and the contributions were paid on 14.02.2009. Though the appellant produced the challans for having remitted Rs.2353/- on 14.02.2009, they failed to furnish the details of employees against whom these remittances were made.

7. It can be seen that the respondent authority issued the impugned order without properly verifying the data available at his disposal and also due to the fact that the appellant failed to produce the relevant records for deciding the eligibility and also quantifying the dues. For that reason the impugned order cannot be sustained.

8. Considering the facts, circumstances and evidence in this appeal, I am not inclined to accept the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent authority to re-decide the matter after issuing notice to the appellant, within a period of 6 months from the date of receipt of this order. The respondent authority shall verify the correctness of the data regarding the 8 excluded employees mentioned in the Annexure P6 written statement. The appellant shall produce the details of the 33 employees for deciding the eligibility and quantification of dues, if any, against these employees. In case the appellant fails to appear or fails to produce the documents called for, the respondent authority is at liberty to decide the matter according to law.

Sd/-

(V. Vijaya Kumar)
Presiding Officer