



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

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

(Friday the 27th day of August, 2021)

APPEAL Nos.702/2019 & 376/2018

(Old nos.78(7)2012 & 504(7)2014)

Appellant : M/s.Mathstraman Manufactures
& Traders Pvt Ltd
Plot No.71, 72
Major Industrial Estate
South Kalamassery
Ernakulam – 683109

By Adv.John Mani V. &
Adv. Sriram P.

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office, Kaloor
Kochi - 682017

By Adv.Sajeevkumar K. Gopal &
Adv.S.Prasanth

This case coming up for hearing on 27.08.2021 and the same day this Industrial Tribunal-cum-Labour Court passed the following:

ORDER

Appeal No.702/2019 is filed from order no.KR/KC/21567/ENF-3(8)/2011/12652 dt.18.11.2011 assessing dues U/s 7A of EPF & MP Act, 1952

(hereinafter referred to as 'the Act') against evaded wages for the period from 03/2010 to 10/2010. The total dues assessed is Rs.9,98,806/-.

2. The appeal was filed before EPF Appellate Tribunal, New Delhi as ATA No.78(7)2012. Appeal was admitted by the Hon'ble Tribunal vide order dt.09.04.2012. At the time of admission, the learned Counsel for the appellant submitted before the Tribunal that an amount of Rs.2.6 lakhs against the assessment has already been remitted. The Hon'ble Tribunal admitted the appeal subject to the deposit of the said amount. The learned Counsel for the respondent submitted that the amount deposited by the appellant is not part of the assessment as it is clear from the challans produced by the appellant. For eg., the amount assessed for 09/2010 is only Rs.47,325/- whereas the amount paid as per challan for 09/2010 is Rs.83,061/-. Similarly for the month of 10/2010, the amount assessed is only Rs.57,742/- whereas the amount remitted by the appellant is Rs.1,09,622/-. Hence it is clear that the amounts deposited earlier by the appellant had already been accounted by the respondent authority. Hence it is clear that no amount U/s 7(O) is deposited by the appellant establishment. Further it is seen that the appeal was dismissed for default by the EPF Appellate Tribunal vide order dt.12.08.2014. The EPF Appellate Tribunal, New Delhi vide order dt.17.09.2014 restored the appeal on a cost of Rs.5000/- to be paid to the respondent. The learned

Counsel for the respondent submitted that no such amount is seen paid by the appellant.

3. **Appeal No.376/2018** is filed against order no.KR/KCH/21567/ENF-3(8)/2014/18547/1630A dt.22.05.2014 assessing dues U/s 7A of the Act on evaded wages for the period from 11/2010 to 03/2012. The total dues assessed is Rs.7,94,995/-.

4. The appeal was filed before EPF Appellate Tribunal as ATA no.504(7)2014. The appeal was admitted by the EPF Appellate Tribunal by order dt.22.07.2014 on the condition that the appellant shall remit 50% of the assessed amount with the respondent. Later the appeal was transferred to this Tribunal and re-numbered as Appeal no.376/2018. The learned Counsel for the appellant was directed to confirm whether the appellant has deposited the pre-deposit amount U/s 7(O) as directed by the Hon'ble EPF Appellate Tribunal. The appeal was posted on various dates from 23.09.2019 to confirm pre-deposit. There was no confirmation regarding 7(O) deposit. Finally the learned Counsel for the respondent submitted that there is no pre-deposit made by the appellant. The learned Counsel for the appellant also submitted that the matter is before Hon'ble NCLT , the pre-deposit is not done and will produce the orders of NCLT in this regard. However no such order is produced inspite of giving time to do so.

5. As per Sec 7(O) of the Act, “No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined by an Officer referred to in Sec 7A provided that the Tribunal may for reasons to be recorded, waive or reduce the amount to be deposited under this section”. In **M/s. Muthoot Pappachan Consultancy and Management Services Vs Employees Provident Fund Organization and Others**, 2009 (1) KHC 362 the Division Bench of the Hon’ble High Court of Kerala held that the deposit of 75% U/s 7(O) of EPF Act is a pre-condition for maintaining the appeal and not a condition for staying the operation of the order under appeal.

6. Considering the facts, circumstances, pleadings and evidence in these appeals, I am not inclined to interfere with the impugned orders.

Hence the appeals are dismissed as not maintainable.

Sd/-

(V. Vijaya Kumar)
Presiding Officer