



सत्यमेव जयते

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

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

(Monday the 3rd day of May, 2021)

APPEAL No.83/2018

Appellant : M/s.Sanjo Motors
XVI/318A
Areeckal Junction
Karukutty P.O.
Ernakulam – 683576

By Adv.C.B.Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloor
Kochi – 682016

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 01.03.2021 and this Tribunal-cum-Labour Court on 03.05.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KCH/1529364/ENF-5(3)/2017-18/13527 dt.06.02.2018 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of regular employees and also 93 non enrolled employees. The total dues assessed is Rs.9,78,698/-.

2. The appellant is a registered partnership firm engaged in the sale and service of two wheelers. The appellant was regular in compliance. While so the respondent initiated an enquiry U/s 7A of the Act vide notice dt.22.02.2017. The appellant was not aware of the issues on the basis of which the enquiry was being conducted. The appellant was not served the copy of the report of the Enforcement Officer. The respondent issued the assessment order for the period from 04/2015 to 07/2016 whereas the summons was issued for assessment of dues for the period from 06/2015 to 07/2016. The change in the enquiry period was not notified to the appellant. As per the impugned order, the respondent has assessed an amount of Rs.13,78,708 as additional dues in respect of the enrolled employees for the period from 04/2015 to 07/2016. However the respondent failed to provide any reason for any such additional assessment. The respondent also assessed an amount of Rs.8,62,036/- as EPF dues in respect to certain alleged non enrolled employees for the period from 04/2015 to 07/2016. The appellant did not engage any employee who is not enrolled to the fund. Since the appellant was not in receipt of the report of the Enforcement Officer, it is not possible to comment on the engagement of employees who were alleged to have been not enrolled to the fund. The appellant has filed an application under RTI, a copy of which is produced and marked as Annexure A3. The

appellant reserves his right to supplement the pleadings after receipt of the report of the Enforcement Officer in reply to the RTI application.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.02.2015. The appellant failed to remit contribution for the period from 06/2015 to 07/2016. Hence an enquiry was initiated to determine the outstanding dues. Summons dt.27.02.2017 was issued to the appellant. On the basis of a complaint received, the Enforcement Officer of the respondent visited the establishment on 03.09.2016 and reported that the appellant defaulted in remittance from 04/2015 onwards. The Enforcement Officer submitted a report dt.25.11.2016 wherein the provident fund contribution payable by the appellant along with wage registers for the period from 04/2015 to 07/2016 was furnished. It was also reported by the Enforcement Officer that there were 92 employees who were not enrolled to provident fund from their due date of eligibility. The appellant never raised any dispute regarding the non receipt of the inspection report at the time of the enquiry U/s 7A. The appellant establishment is a chronic defaulter and the details of remittance with date of remittance for the period from 04/2015 to 01/2017 will disclose the delay in remittance of contribution by the appellant. The Enforcement Officer's report was sent along with the summons of hearing U/s 7A of the Act on 27.02.2017 and the same has

been duly acknowledged by the appellant. Hence the contention taken by the appellant that they were not aware of the issues involved in the enquiry is not correct. The enquiry U/s 7A of the Act was attended by an authorised representative of the appellant. The appellant has not raised any contention regarding non receipt of the report or any objection regarding the contents of the report. It is a settled law that the issues which are not raised before the enquiry authority cannot be raised before the Appellate authority. The Hon'ble High Court of Rajasthan in **Ess Dee Carpet Enterprises Vs UOI**, 1985 LIC 1116 held that a question of fact not raised before the Regional Provident Fund Commissioner in the enquiry U/s 7A cannot be raised in the writ petition. The copies of the daily order sheet are marked and produced as Exbt.1 to 8 to show that the appellant has not raised any contentions raised in this appeal before the 7A authority. The appellant sought a copy of the report of the Enforcement Officer under RTI Act and the same was provided to him. However the appellant deliberately avoided producing the same in this appeal. Once the report is produced, the true facts of the case will emerge and the appeal is bound to fail. It is very clear that the appellant approached the Tribunal suppressing the information. The appellant received the report of the Enforcement Officer on 02.03.2017 and attended the enquiry thereafter. If the appellant was really aggrieved, he ought to have approached the respondent U/s 7B of the Act. As

per Para 26 of EPF Scheme, every employee employed in or in connection with the work of a factory or establishment other than an excluded employee who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining of the factory or establishment. All the non enrolled employees were drawing a salary less than the statutory limit of Rs.15,000/- and therefore there is no dispute regarding membership. The appellant did not raise any dispute regarding member at the time of enquiry. The details of the 92 employees and their date of joining are available in the impugned order itself. Hence the appellant cannot claim that the non enrolled employees are not identifiable. Though the appellant made some remittance in respect of regular employees, they failed to remit employer's share of provident fund contribution in respect of certain employees. During the course of 7A, it was noticed that the appellant failed to remit employee's share of contribution w.e.f. the date of coverage 01.04.2015. It is a clear case where the appellant violated the provisions of U/s 6 and 6C of the Act read with Para 30 and 38 of EPF Scheme. During the course of enquiry, it was noticed that the appellant establishment was in default from 04/2015 and therefore the dues were assessed from that date. In **Maharashtra State Co-operative Bank Ltd Vs PFC**, 2009 10 SCC 123 the Hon'ble Supreme Court held that since the Act is a social welfare legislation intended to protect the interest of a weaker section

of the society, the workers employed in factories and other establishments, it is imperative to give a purposive interpretation to the provisions.

4. The appellant establishment default in remittance of contribution. The respondent therefore deputed one of his Enforcement Officers to conduct the inspection of the appellant establishment. The Enforcement Officer reported that the appellant establishment defaulted in contribution from the date of coverage and only part payments were being made. The Enforcement Officer also reported that 93 employees were not enrolled to provident fund from their due date of eligibility. The respondent therefore initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing on all days when the matter was posted. The representative also produced the records called for by the respondent authority to assess the dues. According to the learned Counsel for the appellant, the respondent failed to provide a copy of the report of the Enforcement Officer to the appellant at the time of the enquiry and therefore he was not in a position to take a proper defence before the respondent authority. Hence he applied for a copy of the report of the Enforcement Officer under RTI Act and prayed that he may be allowed to take additional pleadings in the appeal after the receipt of the report of the Enforcement Officer. According to the learned Counsel for the respondent, the report of the Enforcement Officer was already forwarded to the appellant along with the summons dt.27.02.2017

and the plea of the learned Counsel for the appellant that he was not in receipt of the report is not correct. According to the learned Counsel for the respondent, this plea is taken with a deliberate intention of delaying the process of recovery. The learned Counsel for the appellant also pointed out that the enquiry was initiated for the period 06/2015 to 07/2016 whereas the impugned order is issued for the period from 04/2015 to 07/2016. According to the learned Counsel for the appellant, it was noticed during the course of enquiry that the appellant was in partial default from the date of coverage i.e., 04/2015 as the appellant failed to remit the employees' share of contribution from that date and the representative of the appellant was also informed of the issue during the course of enquiry itself and the representative of the respondent raised no objection regarding the extension of assessment period by two months.

5. The basic argument by the learned Counsel for the appellant was that the report of the Enforcement Officer on the basis of which the enquiry is initiated is not provided to the appellant at the time of enquiry U/s 7A. As rightly pointed out by the learned Counsel for the respondent on a perusal of the Annexure A2 summons dt.27.02.2017 issued by the respondent to the appellant clearly states that " The copies of the report dt.25.11.2016 of Smt.Preeji P. Prabhakaran the Enforcement Officer of Provident Fund Department which is self explanatory and also the documents/records referred to in Schedule A

hereunder are enclosed herewith to give you an opportunity for representing your case and to enable you to give your representation, response and reply to this notice for judicious enquiry and fair determination of the subject matter of this notice ". Hence it is very clear that the report of the Enforcement Officer dt.25.11.2016 based on which the enquiry was initiated was sent across to the appellant and the same was also acknowledged by the appellant. The respondent further produced Exbt.1 to 8 to point out that the representative of the appellant who attended the hearing never raised the issue with regard to the non receipt of the report in the enquiry. Hence the main case of the appellant that the respondent failed to given a copy of the report of the Enforcement Officer cannot be sustained. Further it is seen from the proceedings of enquiry produced by the appellant, the representative of the appellant also submitted a declaration in the proceedings on 27.07.2017 to enroll all the non enrolled employees. In the year 2017, the respondent organisation has come up with a scheme called Employees Enrollment Campaign (EEC) 2017 to allow the employers to enrol all the non enrolled employees to provident fund membership. As per the scheme, the employers are required to file a declaration in the prescribed proforma and remit the employer's share of contribution along with interest and Rs.1/- for damages per annum. If they failed to remit the amount within 15 days the declaration will become invalid. The very fact that the

appellant had filed a declaration under EEC 2017 will clearly substantiate the fact that the appellant was aware of the non enrolled employees. Further the impugned order very clearly identifies the employees along with the date of eligibility. The appellant also pleaded that they may be allowed to raise additional pleadings after the receipt of the report of the Enforcement Officer under RTI Act. According to the clarification of the respondent, the report of the Enforcement Officer was provided to the appellant as requested him as per Annexure A3. However the appellant failed to raise any additional pleadings in this appeal.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer