



सत्यमेव जयते

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

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

(Thursday the 12<sup>th</sup> day of March, 2020)

**Appeal No.521/2019**

(Old No. ATA 718 (7) 2009)

Appellant : M/s. Sastha Enterprises,  
Beach Road,  
Kollam – 691001

By Adv. M.K Saseendran

Respondent : The Assistant PF Commissioner  
EPFO, Parameswar Nagar  
Kollam- 691001

By Adv. Pirappancode VS Sudheer &  
Adv. Megha.A

This appeal came up for hearing on 31/01/2020 and this Industrial Tribunal cum Labour Court issued the following order on 12/03/2020

**ORDER**

Present appeal is filed from Order No. KR/KLM/1320-A/Enf 1 (4) 2009 / 1487dt.30/04/2009 assessing dues U/s 7A of EPF & MP

Act,1952 (hereinafter referred to as 'the Act'.) on evaded wages for the period from 05/2004 to 04/2008. The total dues assessed is Rs.12,01,809/-. The corrigendum to the above order issued vide order no KR/KLM/1230-A/Enf 1(1)/ 2009 dt. 05/08/2009 also is being challenged in this appeal.

2. The appellant herein operates several cashew factories in the state of Kerala. One such unit is situated at Thazhuthala, Kollam and is covered under the provision of the Act. The respondent issued a notice dt. 09/07/2008 U/s 7A of the Act for assessing the Provident Fund liability for the period from 05/2004 to 04/2008. The authorised representative of the appellant attended the hearing. During the course of enquiry the respondent started investigating into various issues such as non-enrollment of 95 workers, non-remittance of contribution on leave wages and holiday wages and non-remittance of dues on actual wages. The respondent collected evidence behind the back of the appellant violating the provision of natural justice. Without considering any of the representation made by the appellant the respondent issued the impugned order dt. 30/04/2009. After the retirement of the incumbent, the new officer who took charge suomoto passed a

corrigendum order revising the due amount to Rs. 34,81,700/-The basis of the 2<sup>nd</sup> order is stated to be an arithmetical error in calculation committed by his predecessor in office. The assessment of dues was resorted to on the basis of assumptions and presumptions and is not based on facts. The respondent calculated the weekly average wage of an employee as Rs. 511.41 paisa in respect of some workers on the basis of wage card and prepared wages assuming that the same wages were actually paid to all workers during the period. The copies of the wage cards, on the basis of which the calculation were made were not furnished to the appellant. The respondent did not consider the objection of the appellant that those wage cards were fake and not issued by the appellant. The respondent also did not consider the fact that the workers of the industry were paid wages on piece rate basis and as such there cannot be any uniformity in their wages. The alleged card holders were not made available for cross examination. Even the identity of those employees were not disclosed by the appellant. The request of the appellant for adjournment on 12/02/2009 was not considered by the respondent. The corrigendum order issued also vitiated by the legal and factual errors.

3. The respondent filed counter denying allegations in the appeal memorandum. Present appeal is heard and disposed of by EPF Appellate Tribunal vide order dt. 12/01/2011 on the finding that the appellant had not co-operated with the authority while the enquiry U/s 7A was going on. The appellant approached the Hon'ble High Court of Kerala in Writ Petition No 4477/2011 on the ground that five appeals were dismissed through stereotype orders. The Hon'ble High Court of Kerala vide order dt. 03/01/2012 disposed of the Writ Petition along with five other Writ petition filed by the appellant with a direction to hear the matter and dispose of the same in accordance with the law. The appellant herein runs many cashew factories in the State of Kerala especially in the district of Kollam. It is seen that the cashew units run by the appellant are chronic defaulters with regard to Provident Fund liability. These units deduct the required amount from wages of poor workers towards employees share of contribution and never remit the same to the fund within the time limit. The appellant would remit a part of the contribution after the 7A notice is received by him. It is also seen that the appellant herein approach the Appellate Authority challenging the orders issued by the 7A

authority so that they will get sufficient time to manipulate the accounts during the pendency of the appeal. The appellant is in the habit of misusing the employees share of contribution deducted from the salary of the employees which is an offence U/s 405 & 406 of the Indian Penal code. The appellant defaulted the Provident Fund contribution for the period from 05/2004 to 04/2008, inspite of repeated efforts made by the respondent. Hence an enquiry U/s 7A was initiated, by issuing notice dt. 09/07/2008 and fixing 23/07/2008 as date of enquiry. There was no representation for the appellant on 23/07/2008. In the meanwhile the General Secretary, Kerala Kashuvandi Vyavasaya Masdoor Sang, Kollam addressed a complaint to RPFC, Trivandrum stating that the appellant was not remitting statutory contribution recovered from the employees and with a request to take action against the appellant to secure compliance. The RPFC, Trivandrum forwarded the complaint to Sub Regional Office , Kollam. An authorised representative of the appellant appeared before the respondent on 27/08/2008 and produced wage registers in respect of permanent employees for the period 03/2008 to 07/2008. No other records called for, were produced by the appellant. A copy of the complaint received from

the General Secretary KKVM Sangh was also handed over to the representative of the appellant to offer his comments, if any. On the request of the representative of the appellant and on his assurance that he will produce all the relevant records, the enquiry was adjourned to 26/09/2008. The Union Secretary who complained against the appellant was also requested to attend the enquiry on 26/09/2008, to provide evidence in support of his allegations against the appellant. On the request of the appellant the enquiry was adjourned to 28/10/2008, 17/11/2008, 12/01/2009, 28/01/2009 and 12/02/2009. During the entire process of enquiry the trade union Secretary and Vice President attended the 7A proceedings. They alleged that the employee's share of contribution deducted from the salary of the employees were not paid by the appellant. Some of the employees also attended the 7A proceedings and adduced evidence against the appellant. They also provided copies of weekly wage card issued by the appellant establishment to prove the remittance of dues made on less wages. From the wage slip produced by the employees it could be seen that the average weekly wages of an employee is Rs 511.41 whereas the monthly salary on which contribution was paid varied from Rs. 585.13 to

807.31 only. A copy of the report of the Enforcement Officer was served on the appellant. The letter dt. 11/07/2008 from General Secretary of the union was given to the representative of the appellant to offer his comments. Copies of employees wage slip produced by the union leaders were served on the appellant representatives. An opportunity was offered on 12/02/2009 for cross examining the Enforcement Officer by the appellant. The appellant never requested to examine his employees who complained against him. Hence it may be seen that all the requirements of natural justice were met before the impugned order was issued. The appellant was given adequate opportunity to produce the records summoned by the 7A authority. Though the appellant produced few wage registers it was clear that those wage registers were also fabricated as there was no signature of the employees in any of the registers produced by the appellant. Since the appellant failed to produce the other's documents to counter check the genuineness of the wage register produced, it was difficult to rely on those documents alone for assessment of the dues. Further the wage slip produced by employees and union leaders clearly show the quantum and nature of practice by the

establishment by suppressing the wages to make extra profit out of the employees' share of contribution deducted from the salary of the employees. The appellant failed to produce any document to counter the documents produced by the trade union leader and also the employees, against the appellant. Since the appellant failed to produce the required documents the respondent arrived at weekly average wages relying on the wage slips produced by the employees and the trade union leaders. The number of employees were taken from the statutory return Form 6A submitted by the appellant and Form 12A return furnished by the Enforcement Officer. In the absence of reliable evidence the other issues such as dues on holiday wages, leave wages and non-enrolled employees were not taken into consideration in the proceedings U/s 7A of the Act. Since there was an arithmetical error in calculation, the respondent issued a corrigendum dt. 05/08/2009 for revising the dues amount to Rs. 34,81,700/- being the statutory dues for the period from 05/2004 to 04/2008.

4. The appellant defaulted in payment of contribution for the period from 05/2004 to 04/2008. Hence an enquiry was initiated to assess the Provident Fund dues including the amount



recovered from the salary of the employees. In the meanwhile respondent received a complaint from trade union alleging evasion in wages in calculation of Provident Fund contribution. The respondent deputed an Enforcement Officer to investigate the complaint. The Enforcement Officer submitted a report alleging evasion in wages and also non-contribution for leave wages and holiday wages and also non-enrolment of 95 employees to Provident Fund. Copies of the complaint and also the report of Enforcement officer were given to the representative/Advocate who appeared on behalf of the appellant, to offer their comments. The appellant was also directed by the respondent to produce all the relevant records required for verifying whether the contribution of employees were paid on actual wages. The appellant was provided eight opportunities to produce the records relevant for assessment of Provident Fund dues. The appellant failed to avail any of the opportunities The appellant was also given an opportunity on 12/02/2009 to cross examine the Enforcement Officer who conducted the investigation and submitted the report. The appellant failed to avail the opportunity to cross examine the Enforcement Officer. The trade union and the employees who

attended the hearings produced their wage cards which clearly shows the wages received by them during the relevant point of time. Since the appellant failed to produce any records the respondent was forced to calculate the average weekly wages on the basis of the wage slip produced by the employees and trade union leaders and finalized the Provident Fund dues. The respondent also took the number of employees on the basis of the statutory report filed by the appellant and hence there cannot be any dispute regarding the number of employees during the relevant point of time. All the above facts are born out from the impugned order itself. The failure of the appellant to avail the opportunities provided by the respondent is fatal as far as the appellant is concerned. In **Saraswathy Construction Co. Vs Central Board of Trustees**, 2010 LLR 684 the Hon'ble High Court of New Delhi held that it is the responsibility of the employer to produce the relevant records to substantiate his case in an enquiry U/s 7A of the Act. A similar view was taken in the case of **C. Engineering Work Vs RPFC**, 1986 1 LLN 242. In the above case the employer failed to produce any document to prove the employment strength to discredit the report of Enforcement Officer. In **HC Narula Vs RPFC**, 2003 (2) LLJ 1131

the Hon'ble High Court held that when a reasonable opportunity was given to the employer to disprove the claim of the Enforcement Officer and the employer fails to avail the same, there after the employer cannot allege that the employment strength submitted in the report of the Enforcement officer is not correct. In this case, as already discussed, the appellant was provided all the opportunities to discredit the report of the Enforcement Officer or to prove the actual wages paid to the employees through his own books of accounts. The appellant failed to avail any of the opportunities and therefore cannot turn around and plead that the assessment in the impugned order is based presumptions.

5. In the circumstances explained above there is absolutely no reason to interfere the impugned order dt. 30/04/2009 issued by the respondent.

6. It is seen that the respondent issued a corrigendum dt. 05/08/2008 which is also under challenged in this appeal. On a perusal of said order it is seen that the respondent has revised the dues assessed suomotto on the ground that there are some arithmetical error in the original calculation. However it is seen that the dues assessed as per the corrigendum order has increased the

dues amount three times, compared to the order issued as per the original order. The said corrigendum is seen to be issued without even issuing a notice to the appellant. In all fairness, it is felt that the appellant is entitled to a hearing before such modification orders are issued through a corrigendum. It is clear violation of natural justice because the implication of the order on the appellant is very huge. Hence it is not possible to uphold the order dt. 05/08/2009 issued through a corrigendum.

Hence the appeal against Order No. KR/ KLM/1230-A/Enf-1 (4) 2009/1487 dt. 30/4/2009 is dismissed. The appeal against the corrigendum order dt. 05/08/2009 is allowed the impugned order dt. 05/08/2009 is set aside and the matter is remitted back to the respondent to reassess the dues within a period of 3 months of receipt of this order after issuing a notice to the appellant.

Sd/-

**(V. Vijaya Kumar )**  
Presiding Officer