



सत्यमेव जयते

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

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

(Wednesday the 09th day of December, 2020)

Appeal No.417/2018

(Old No. ATA No.752(7)2011)

Appellant : M/s. Manuel Mohandas
Kevin Cashews
Chengoor, Ambalamukku,
Pooyappally,
Kollam – 691506

By. Adv. Ashok B Shenoy &
Adv. P.R Nayak

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam- 691 001

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

This appeal came up for hearing on
09/12/2020 and this Industrial Tribunal cum Labour
Court issued the following order on the same day.

ORDER

Present appeal is filed from order No. KR/KLM/3611/Enf 1(5) 2011 3029 dt. 15/09/2011 assessing dues U/s 7A of EPF and MP Act (hereinafter referred to as ' the Act') in respect of dues on difference in wages and holiday wages for the period from 01/2010 to 10/2010. The assessed dues is Rs. 2,75,482/-.

2. The appellant is engaged in the business of processing cashew nuts on contract basis for a cashew factory run under the name and styles of M/s. Kevin cashews. The appellant received a notice dt. 03/02/2011 for conducting enquiry on 10/02/2011 U/s 7A of the Act, for determining contribution due from appellant for the period from 01/2010 to 10/2010 on account of non remittance of provident fund money. The basis of the notice was not informed to the appellant. The appellant attended the enquiry and submitted that the appellant has already remitted the contribution in respect of his

employees for the period from 01/2010 to 10/2010. The appellant also produced wage register for the relevant period along with other statutory records. The respondent issued the impugned order alleging difference in wages and holiday wages. The impugned order is issued in violation of the principles of the natural justice. As the respondent failed to disclose the base on which the enquiry is conducted. A copy of the complaint alleged to have been received by the respondent or other materials relied on the respondent were not provided to the appellant. The impugned order is bad since the respondent relied on the report of the Enforcement Officer without considering its tenability and acceptability. Impugned order is issued without verification of the actual records.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act and is a chronic defaulter in remitting provident fund contribution. The appellant is a habitual defaulter and number of complaints were being

received from Trade Union leaders. A complaint was forwarded by the Special Officer for Cashew received from Shri. P.S Pradeep, State General Secretary of Kerala Kashuvandi Thozhilali Congress. An Enforcement Officer was deputed to verify the relevant records maintained by the appellant. As per Enforcement Officer's report the appellant failed to remit corresponding contribution in respect of holiday wages and difference of wages as provided under the Act from 01/2010 to 10/2010. A copy of the report was handed over to the appellant and he was directed to remit the contribution. As the appellant failed to comply with directions of the Enforcement Officer to remit the defaulted dues, the respondent initiated action U/s 7A of the Act. An authorized representative attended the hearing and sought adjournment. After many adjournments the enquiry was finalized taking into consideration the wage card/leave book etc produced by the appellant and Shri. P.S Pradeep, INTUC District Secretary. The appellant is a chronic defaulter and remits only a meager part of the contribution recovered from the

employees. The respondent finalized the 7A enquiry on the basis of the report of Enforcement Officer and also on the basis of the records produced by the appellant and the complainant. A copy of the report of the Enforcement Officer was also given to the appellant . But the appellant failed to do so. The appellant failed to remit contribution on full wages and also holiday wages.

4. The allegation of the appellant here in is that the 7A enquiry is initiated on the basis of a complaint, a copy of which was not provided to them. It is seen that the appellant never raised the issue before the respondent during 7A enquiry. Further the allegation of the appellant in this appeal is that a copy of the report of the Enforcement Officer who conducted the investigation was not given to them. However according to the learned Counsel for the respondent, a copy of the report of the Enforcement Officer was handed over to appellant at the time of inspection itself and the enquiry U/s 7A of the Act initiated only because of the appellant failed to comply with the inspection observations given to the appellant by

the Enforcement Officer. Another point raised by the learned Counsel for the appellant was that on 24/08/2011 when the 7A enquiry was posted for hearing there was no representation for Union and therefore the matter was adjourned to 27/09/2011. However from the impugned order it is seen that on 30/8/2011 Shri. P.S Pradeep INTUC District Secretary appeared and produced wage card/leave book in respect of certain employees as proof of wages. It is seen from the impugned order that the assessment was finalized on the basis of the request on the complainant, inspite of objection from the appellant who insisted that the matter can be heard on 27/09/2011.

5. It is seen from the pleadings that there was violation of principles of natural justice in the conduct of the enquiry U/s 7A of the Act. A copy of the complaint shall be given to the appellant and a copy of the report of the Enforcement Officer shall also be provided to the appellant so that the appellant will be in a position to

clarify the observations in the report of the Enforcement Officer.

6. The question whether holiday wages will attract provident fund deduction is also required to be examined in the light of the decision of the Hon'ble Supreme Court of India in **Manipal Academy of Higher Education Vs Provident Fund Commissioner**, 2008 AIR (SC) 1951 (SC2J) wherein the Hon'ble Supreme Court held that leave encashment will not attract provident fund deduction.

7. Considering all the facts pleading and evidence in this appeal I am inclined to interfere with the impugned order.

Hence the appeal is allowed impugned order is set aside and the respondent is directed to reassess the dues after giving notice to the appellant, within a period of 3 months from the date of receipt of this order. A copy of the complaint and a copy of the report of the Enforcement Officer shall be forwarded to the appellant along with the

notice. The respondent shall also examine whether the holiday wages will attract provident fund deduction. The appellant shall produce all the relevant records called for by the respondent at the time of hearing. If the appellant fails to produce the documents called for, the respondent may make adverse presumption. The amount deposited by the appellant as per the direction of this tribunal shall be adjusted after finalization of the enquiry.

Sd/-

(V. Vijaya Kumar)
Presiding Officer