



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.437/2018

(Old No. ATA No.751(7)2011)

Appellant

:

Manuel Mohandas
Kevin Cashews
Chengoor, Ambalamukku,
Pooyappally,
Kollam – 691506

By. Adv. Ashok B Shenoy &
Adv. PR Nayak

Respondent

:

The Assistant PF Commissioner
EPFO, Sub Regional Office
Kollam

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

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) 2011/1205 dt. 14/07/2011
assessing dues in respect of non-enrolled employees,

omitted wages and holiday wages U/s 7A of EPF & MP Act,1952 (hereinafter referred to as 'the Act') for the period from 03/2007 to 12/2009. The total dues assessed is Rs. 5,84,168/-.

2. The appellant is engaged in the business of processing cashew nut. The Enforcement Officer of the respondent conducted an inspection of appellant establishment on 07/01/2010 and provided a copy of the report of inspection dt. 29/01/2010 which is produced as Annexure A1. According to Annexure A1 report it was pointed out that the appellant failed to remit the contribution amounting to Rs. 20,84,266/- under 3 different heads, (1) difference of wages, (2) dues in respect of nonenrolled employees from 02/2009 to 12/2009 and (3) dues on holiday wages from 04/2007 to 12/2007. After receipt of Annexure A1 report the appellant sent a letter dt. 03/02/2010 requesting the Enforcement Officer to reveal the basis of calculation. The said letter is marked as Annexure A2. Thereafter the appellant received a notice dt. 23/04/2010 from the

respondent proposing to conduct an enquiry U/s 7A of the Act. The basis of the enquiry and materials on which the enquiry was proposed to be held was not informed to the appellant. The appellant vide Annexure 2 requested the respondent to provide the materials on the basis of which the enquiry is initiated. The respondent provided a copy of Annexure A4 report. During the course of enquiry it was revealed that enquiry was initiated on the basis of a complaint. A copy of the complaint was not given to the appellant. The appellant attended the enquiry and produced all the statutory records and documents including wage register maintained by him for the period from 03/2007 to 03/2010. Without considering any of the documents produced by the appellant the respondent issued the impugned order. The impugned order is issued only on the basis of the report of the Enforcement Officer and without considering any of the documents produced by the appellant.

3. The respondent filed counter denying the above allegation in the appeal memorandum. The appellant is a

chronic defaulter and is in the habit of remitting contribution only on part of the wages paid to the employees. The respondent also used to received complaints from employees and trade union leaders. One complaint was received from Shri. Murali Madanthacode, General Secretary INTUC regarding the non remittance of provident fund contribution. An Enforcement Officer of the respondent was deputed to investigate into the complaint. The Enforcement Officer reported that the appellant failed to remit contribution in respect of holiday wages, non enrolled employees and difference of wages as provided U/s 6 of the Act for the period from 03/2007 to 12/2009. A copy of the inspection report was also handed over to the appellant with a direction to set right the default within 10 days time. Since the appellant failed to comply, the respondent initiated action U/s 7A of the Act. A representative of the appellant and the complainant Shri. Murali Madanthacode attended the hearing. The representative did not produce any records. The enquiry was adjourned 16 times on the request of

the appellant. However, he failed to produce the complete records required by the respondent for finalizing the 7A enquiry. However a part of the wage registers were produced by the appellant. The appellant also submitted that the records for the period from 03/2007 to 02/2008 were not available with him. Shri. Murali Madanthacode stated that if records are not available, the wages reported in ESIC returns may be based for the assessment. The enquiry was finalised on the basis of the information placed before the respondent. The dues assessed as per impugned order for the period from 03/2007 to 12/2009 is not "further contribution" It was dues not remitted by the appellant in time. The appellant remitted only contribution in respect of the part of the wages.

4. According to the learned Counsel for the appellant the dues were not assessed on the basis of any records and is based only on the report of the Enforcement Officer. However it is clear that the report of the Enforcement officer is only the basis of the enquiry.

The Enforcement Officer in his Annexure A1 report has reported the total dues of Rs. 20,84,266/- whereas the impugned order is only for Rs. 5,84,168/-. The appellant did not produce the wage register for the period from 03/2007 02/2008. However, the assessment was based on the statutory return filed by the appellant under the ESI Act. Further the appellant produced the wage register for the period from 03/2008 to 12/2009. Hence there is no basis for the allegation that the assessment is made only on the basis of the report of the Enforcement Officer. With regard to the contribution in respect of non enrolled employees, the Annexure A1 report of the Enforcement Officer, a copy of which was provided by the appellant by the Enforcement Officer and further during the course of 7A enquiry has furnished the name of employees the date of eligibility for Provident Fund membership and the basic wages + DA of these employees. It was up to the appellant to counter the claim of the Enforcement Officer of the respondent had there been any serious dispute regarding their enrolment. It is seen that the appellant

has not raised any dispute regarding the enrolment of three employees. Hence the appellant cannot dispute the assessment dues in respect of non enrolled employees in this appeal. The third category of the assessment is with regard to holiday wages. The respondent will have to examine whether holiday wages will attract Provident Fund deduction in view of the decision of the Hon'ble Supreme Court in **Manipal Academy Vs Provident Fund Commissioner** , 2008 (5) SCC 428.

5. In view of the above observations the assessment of dues in respect of non-enrolled employees and dues on omitted wages in the impugned order is confirmed. However the dues assessed on holiday wages is set aside and a matter is remitted back to the respondent to examine whether the holiday wages will attract provident fund deduction in view of the observations made above.

Hence the appeal is partially allowed, the assessment of dues in respect of holiday wages is set aside and the matter is remitted back to the respondent to reassess the

dues within a period of 3 months from the receipt of this order, after issuing notice to the appellant. The amount remitted by the appellant U/s 70 of the Act as per direction of this tribunal shall be adjusted against the dues already assessed on omitted wages and nonenrolled employees.

Sd/-

(V. Vijaya Kumar)
Presiding Officer