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

सत्यमेव जयते

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

(Wednesday the 12th day of May, 2021)

APPEAL No.519/2019

(Old No. ATA 455(7)2008)

Appellant	:	M/s. Thejas Vastralaya Main Road, Payyannur Kannur – 670 307 By Adv. M. Sasindran
Respondent	:	The Assistant PF Commissioner EPFO, Regional Office, Fort Building V.K. Complex , Fort Road Kannur – 670 001 By Adv. K. C. Santhosh Kumar

This case coming up for final hearing on 24.03.2021 and this Tribunal-cum-Labour Court on 12.05.2021 passed the following:

<u>O R D E R</u>

Present appeal is filed from order No. KR / KNR / 18215 / Enf-1(4)/ 2008/3312 dt.27.03.2008 issued U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.)

confirming the coverage of the appellant establishment under the provisions of the Act w.e.f 01/09/2003.

2. The appellant is a partnership firm engaged in the business of textile and garments. Originally there were nine employees in the appellant establishment. During Onam season in 2003 the appellant engaged six more temporary salesmen for 20 days. On 4/11/2003 an Enforcement Officer of the respondent inspected the appellant establishment. The Enforcement Officer persuaded the accountant Mr. Sibi that the employees will get several benefits if the employment strength is shown as 21. Mr. Sibi therefore included the names of 14 employees who were not in existence. On 06/05/2003 the appellant establishment was informed that the establishment stood covered under the provisions of the Act. The respondent initiated an enquiry U/s 7A of the Act as the appellant disputed coverage. The managing partner of the appellant establishment produced the relevant records before the respondent authority. The respondent however issued an order confirming coverage of the appellant under the Act w.e.f 01/09/2003. The appellant challenged the above said order

before the Hon'ble High Court of Kerala and the Hon'ble High Court directed the respondent to give one more chance to the appellant to substantiate their claims. Pursuant to direction of the Hon'ble High Court the respondent initiated fresh enquiry. The appellant participated in the enquiry and produced evidence both documentary and oral to substantiate that the establishment would not come under the purview of the Act. The appellant cross examined the Enforcement Officer who proposed the coverage and also adduced further evidence. Inspite of the evidence the respondent issued an order confirming the coverage of the appellant w.e.f 01/09/2003. The respondent failed to notice that the appellant never engaged more than 13 persons. The Enforcement Officer on his cross examination admitted that he had not prepared the list of employees and he does not know as to who prepared the list of employees. He also admitted that he did not count the number of employees in the appellant establishment. The appellant produced Exbt P1 to 17 and none of the documents were disputed by the Enforcement Officer. There is no document to conclude that the appellant had engaged 20 persons at any point of time. The list of employees furnished by the accountant contained the names of employees who resigned from the establishment during 1997-1998 & 1998-99.

3. The respondent filed counter denying the above allegations. The appellant is a partnership firm. The claim of the appellant that the total employment strength for September, October 2003 was 7 is not correct. The report of the Enforcement Officer dt. 29/10/2003 indicates the number of employees in Sept 2003 as 21. Further as per the list of employees and their wages as on 01/09/2003 duly signed by one of the partner of the establishment, the total employment strength is 21. In the proforma for giving particulars of coverage under EPF and MP Act furnished by the partner of the appellant establishment the total employment strength is shown as 21 wherein there were 9 regular employees and 12 temporary employees. The allegation of the appellant that the Enforcement Officer persuaded the Accountant to furnish the employment strength as 21 is not correct. One of the partner himself has signed the list of employees and also the Performa

information for coverage under the Act. The Enforcement Officer had submitted his proposal along with Form 5A return of ownership signed by the partner, performa information of the establishment in the prescribed performa signed by the partner, list of employees and their wages signed by the partner, copy of general sales tax registration certificate, copy of general ledger for 2003-04, copy of day book page number 124 & 125 and copy of attendance register for 07/2003 to 09/2003. The Enforcement Officer also reported that no attendance or wage register is seen maintained for temporary employees. The appellant establishment is covered under the provisions of the Act on the basis of the report and documents furnished by the Enforcement Officer. The Managing Partner vide his representation dt.24/11/2003 challenged the applicability on the ground that the number of employees working in the appellant establishment is only 7 and the remaining are temporary employees. The matter was taken up U/s 7A of the Act and in the order issued by the respondent, confirmed the coverage of the appellant establishment under the provisions of the Act w.e.f 01/09/2003. The appellant challenged the order before the Hon'ble High Court of Kerala in W.P.(C) No. 16554/2004 and the Hon'ble high Court vide order dt. 14/06/2004 remanded the matter to the respondent to pass fresh orders after giving an opportunity to the appellant. The respondent authority initiated fresh enquiry U/s 7A on 11/08/2004. After prolonged hearing the enquiry was concluded on 19/12/2007. During the course of enquiry the managing partner was cross examined by the Enforcement Officer and the Enforcement Officer who proposed coverage was examined by the Advocate for the appellant. The appellant also examined other witnesses and after considering all the available documentary and oral evidence, the respondent authority came to the conclusion that the appellant establishment is coverable under the provisions of the Act w.e.f 1/9/2003. The appellant establishment is brought under the purview of the Act on the basis of documentary and oral evidence. A copy of the enquiry report dt. 29/10/2003 submitted by the Enforcement Officer is produced and marked as Exbt B1. It can be seen that the employment strength of the appellant establishment was 21 in September 2003. The

Enforcement Officer also submitted a list of 21 employees working in the appellant establishment as on 01/09/2003 furnishing the names, date of joining and wages. A copy of the list of employees produced and marked as Exbt B2. It may be noted that the above list is furnished in the letter head of the appellant establishment under the seal and signature of one of the partners of the appellant establishment. Further in the profile of the establishment signed by the partner of the appellant establishment it is shown that there are 21 employees employed in the establishment consisting of 9 regular and 12 temporary employees. A copy of the performa information furnished by the partner of the appellant establishment is produced and marked as Exbt B3. Further another Enforcement Officer also conducted a physical verification of the employees in the presence of the Enquiry Officer on 23/08/2004 and submitted a report that there are 26 employees engaged inside the shop as on 23/08/2004. A copy of the report dt. 23/08/2004 submitted by the Enforcement Officer is produced and marked as Exbt B4. The respondent authority examined all the witnesses on the side of the appellant as well as the respondent and perused all the documents produced on the side of the appellant and the respondent organization before issuing the impugned order. The statement of the appellant that the list of employees is furnished by the Accountant is not correct. The list of employees is signed under the seal and signature of the partner of the appellant establishment. After remand of the case by the Hon'ble High Court, the appellant along with his Advocate appeared before the respondent and sought time. The enquiry was adjourned to 11/08/2004. On 11/8/2004 an Advocate appeared on behalf of the appellant and requested for the copy of the documents such as the report of the Enforcement Officer, the list of employees etc to enable them to submit the written statement. The request was allowed and enquiry was posted to 09/09/2004 and all the required information was provided to the representative of the appellant. The appellant sought further time to produce more records and the enquiry was adjourned to 07/10/2004. On 7/10/2004 an Advocate submitted a list of documents that the appellant would like to produce. The enquiry was adjourned to 22/12/2004 for oral evidence as requested by the appellant. However the appellant again requested for time. The enquiry was adjourned to 07/05/2005 and the Advocate appeared for appellant again requested for copies of enquiry report and list of employees which has already been provided to the appellant. The enquiry was further adjourned to 13/01/2005, 23/02/2005 & 17/03/2005. On 17/03/2005 the Advocate representing the appellant filed a list of witness to be examined in the enquiry. The enquiry was adjourned to 27/04/2005 and summons were issued to 6 witnesses proposed by the appellant. 4 summons issued were returned by the postal department remarks "Not Known ". Shri. Sibi the Accountant and Shri.Shyril Musnas the partner who signed the documents were examined in the enquiry. In spite of the delaying tactics adopted by the appellant, the appellant establishment was allowed opportunity to cross examine Shri. P. Muralidharan, Enforcement Officer on 24/11/2005. From 24/11/2005 to 09/05/2006 the appellant continued the delay tactics by requesting for adjournment on one ground or other. Shri Mustafa Haji Managing Partner and Shri. Mohandas

Enforcement Officer were also examined in the Enquiry. The cross examination of witness concluded on 21/03/2007. There after the enquiry was adjourned to 10/5/2007, 5/7/2007, 26/07/2007, 23/08/2007, 20/9/2007 and 17/10/2007. On 22/11/2007 an Advocate appearing for appellant submitted an argument note. On the request of the appellant the matter was again adjourned to 19/12/2007 for final arguments and the enquiry was concluded thereafter. On the basis of the elaborate evidence adduced by the appellant and also after cross examining the Enforcement Officer and perusal of the documents produced by the appellant and the respondent organization, the respondent authority concluded that the appellant establishment is statutorily coverable under the provisions of the Act as on 01/09/2003 as the employment strength crossed 20.

4. The only dispute involved in this appeal is whether the employment strength of the appellant reached 20 and therefore whether the appellant establishment is statutorily coverable w.e.f 1/9/2003. On the basis of the available documents the respondent authority concluded that the

appellant establishment is coverable under the provisions of the Act w.e.f 1/9/2003. The appellant approached the Hon'ble High Court in W.P.(C) No. 16554/2004 alleging that the appellant was not provided adequate opportunity by the respondent authority before finalizing the coverage. The Hon'ble High Court of Kerala vide its order dt. 14/6/2004 set aside the order issued by the respondent and remanded the case back to the respondent authority to re-examine the issue after providing an opportunity to the appellant establishment to present their case. It is seen from the impugned order that the respondent authority provided all the opportunities to the appellant establishment to substantiate their claim that they never employed 20 employees as on 09/2003. The respondent authority in the impugned order has stated that the enquiry started on 14/07/2004 and concluded only on 19/12/2007 since the appellant wanted to examine all the related witnesses, cross examine the Enforcement Officers who submitted the report and also adduce other evidences. After examining all such witnesses and production of documents allowed by the respondent authority, the appellant establishment could not categorically prove that their employment strength never reach 20 as on 1/9/2003. The respondent authority on the other hand relied on the list of employees provided by the managing partner of the appellant establishment in the letter head of the appellant establishment under his seal and signature. According to this list which is produced as Exbt B2 there were 21 employees working in the appellant establishment as on 01/09/2003. The date of joining and wage paid by the appellant is also furnished in the list. Further the Managing Partner of the appellant establishment provided information in performa for giving particulars of coverage under EPF & MP Act. This document is also signed under the seal and signature of one of the partners. This documents is produced and marked as Exbt B3 in this appeal. In this document also the appellant furnished the total employment strength as 21. It is further seen that the enquiry officer himself conducted a spot verification on 23/08/2004 along with another Enforcement Officer and found that 26 employees were working in the appellant establishment on 23/08/2004. The report of the

Enforcement Officer dt. 23/08/2004 is produced and marked as Exbt B4. According to the appellant the list of employees as on 01/09/2003 was signed by the Accountant of the establishment. It is seen that the Exbt B2 document is signed by one of the partners under his seal and signature. Both the Accountant and the partner who signed the documents were examined in the enquiry. The appellant could not discredit the documents produced by the respondent organization in the enquiry. The only claim of the appellant in this appeal is the evidence of the Enforcement Officer that he has not written the names of the employees and he is not sure whether who wrote the names of the employees in Exbt B2. In view of the undisputed evidence available in the appeal to substantiate the employment strength of the appellant establishment as on 01/09/2003, is not possible to arrive at a different conclusion to discredit the finding of the respondent authority.

5. The appellant establishment is statutorily coverable under the provisions of the Act w.e.f 01/09/2003. The employees of the appellant establishment are entitled for the social security benefits provided under the Act and Schemes

with effect from that date. Any further delay in enforcing the provision of the Act to the appellant establishment will only amount to denial of justice and social security to the employees of the appellant establishment.

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

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer