

Court No. - 8

Case :- WRIT - C No. - 36508 of 2018

Petitioner :- M/S Pragati Infrapromotors Pvt.Ltd. Dalibagh
Lko.Throu.Dir.

Respondent :- Union Of India Throu.Secy.Ministry And
Employment Labour And Ors

Counsel for Petitioner :- Mahendra Pratap Singh,Arvind
Kumar,Shambhavi Prakash Tiwari

Counsel for Respondent :- A.S.G.,Mayanker Singh

Hon'ble Pankaj Bhatia,J.

1. Heard learned Counsel for the petitioner and Sri Mayanker Singh, learned Counsel appearing on behalf of the respondents no.2 to 4.

2. The present petition has been filed by the petitioner challenging the order dated 21.04.2017 (Annexure-3 to the writ petition), whereby an order was passed against the petitioner under Section 45-A of the Employees State Insurance Act as well as the order dated 01.08.2017, whereby the appeal preferred by the petitioner was dismissed as being beyond limitation and the order dated 01.08.2017 whereby a notice was issued for charging further interest over the outstanding interest.

3. The contention of the Counsel for the petitioner is that although the appeal has been dismissed as being beyond limitation, the order dated 21.04.2017 has not merged with the appellate order and the said order dated 21.04.2017 has been challenged as being contrary to the statutory provisions. He argues that as per the order, the amount allegedly not paid by the petitioner towards the contribution worked out to Rs.53,625/-, which according to the statutory provisions, contain in Section 39 (5)(a) of the ESI Act, is liable to be paid with interest of 12% per annum or at such higher rate, as may be specified. He argues that no such higher rate has been prescribed and in terms of the statutes, the petitioner was required to pay the interest @ 12% per annum whereas while computing the outstanding payment, the amount was worked out to Rs.9,07,137/- without there being any justification. A specific plea in this regard has been taken in paras 5 and 6 of the writ petition, to which, there is no reply in the counter affidavit.

4. Considering the *prima facie* computation done against the

petitioner to be contrary to the mandate of Section 39(5)(a), the order dated 21.04.2017 cannot be sustained and is accordingly quashed.

5. The writ petition is ***allowed*** and the matter is remanded to the respondent no.3 to pass a fresh order determining the amount payable towards interest calculating the same @ 12% per annum on the unpaid amount. The computation as directed above shall be done within a period of two months from today.

6. As the petitioner has deposited 25% of the alleged outstanding during appeal, any amount found to be deposited excess by the petitioner, shall be refunded to the petitioner and any amount found to be deficient after the new order has been passed, shall be paid by the petitioner.

Order Date :- 12.10.2023

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