

**IN THE HIGH COURT OF BOMBAY AT GOA****APPEAL UNDER E. S. I. NO. 4 of 2008**

Employees State Insurance  
Corporation,  
Through its Deputy Regional Director,  
Panchadeep Bhavan, EDC Plot No.23,  
Patto, Panaji, Goa .. Appellant

V/s

M/s. Chowgule & Company Limited,  
Chowgule House,  
Mormugao Harbour,  
Vasco da Gama Goa. .. Respondent

Smt. A. A. Agni, Senior Advocate with Ms. Kalpa Govekar,  
Advocate for the appellant.

Mr. Girish Sardesai and Mr. Shannon Pereira, Advocates for the  
respondent.

**CORAM :- C. V. BHADANG, J.**

**Reserved on : 19<sup>th</sup> June, 2015**

**Pronounced on : 15<sup>th</sup> July, 2015**

**JUDGMENT :**

By this appeal under Section 82 of the Employees State Insurance Corporation Act, 1948 (the Act of 1948, for short), the Employees State Insurance Corporation (Corporation, for short) is challenging the judgment and order dated 10/09/2007 passed by the Employees' State Insurance Court (ESI Court) in

ESIC Case No.7 of 2005. By the impugned judgment, ESI Court has allowed the application filed by the respondent under Section 77 of the Act of 1948, thereby holding that the respondent establishment is not liable to pay the contribution and interest for the period from 02/07/1977 to 30/06/1996.

2. On 22/10/2008, this appeal was admitted on the following substantial questions of law :

*“(a) Whether the findings of the E.I. Court that claim for contribution has to be made by the corporation within 5 years from the date on which the claim arose and the claim beyond the said period is not tenable in view of proviso to clause (b) of Section 77(1-A), is vitiated in law?*

*(b) Whether proviso to clause b of Section 77(1-A) of the Act fixing the period of 5 years for the claim made by the corporation will apply in respect of claim made by the Corporation before the ESI Court and no other proceedings as held by the Apex Court in Civil Appeal No.4291/2000, ESIC V/s C.C. Santhjakumar which judgment specifically holds that the view of the full bench of the Kerala High Court in the case of Regional Director, ESIC Corporation v/s Kerala Electrical Allied Company Limited is not the correct view and the decision of the Madras High Court in the case of Standard Literature is the correct view?”*

3. The brief facts are that the respondent is engaged in the business of the extraction, processing and export of iron ore. The respondent Company is having their mines in various parts of Goa. The sale and administration work of the Company, in connection with the operations, is carried out at its Head Office at Chowgule House, Mormugao Harbour, Goa. It was contended that the Head office of the respondent is not covered by the provisions of the Act of 1948 in as much as the said Act is applicable to Factories and Mines, as defined under the Mines Act, 1952. In short, it was contended that the Head Office of the respondent, where the administrative work is carried out, is distinct from the operations of the mines. As such, the respondent did not register the same under the provisions of the Act of 1948.

4. The appellant, by a letter dated 03/04/1996, sought details from the respondent, claiming that the administrative office from where the business or trading activities are being carried out, is liable to be covered as a 'shop', under Section 1(5) of the Act of 1948. The respondent sent a reply on 03/06/1996 taking a stand that the staff at the Head Office is essentially doing the administrative work and would not be covered under the Act of 1948. It was also claimed that the staff, attending to the trading

activity, comprises of less than 20 employees. Without prejudice to the said claim, the respondent submitted the information in Form 01 on 30/08/1996. On 11/06/1997, the appellant Corporation demanded implementation of the said Act and registration of the employees of the Head Office with effect from 01/07/1996.

5. Feeling aggrieved by the demand notices dated 11/06/1997 and 06/02/1998, as a first round of litigation, the respondent preferred an application under Section 75 read with Section 77 of the Act of 1948, before the ESI Court. That application was disposed of on 02/08/2002 in following terms :

*“38. In my opinion, since till date, no order under Section 45-A of the Act was made and the establishment of the Applicant is otherwise covered from 01/09/1997, ends of justice would be met in case the controversy regarding the payment of contribution for the period from 01/07/1996 to 31/08/1997 is settled by the respondent after giving an opportunity to the Applicant to be heard in the matter before passing the order under Section 45-A of the Act. In other words the controversy regarding the payment of contribution will be settled by the respondent by making an order under Section 45-A of the Act after giving the Applicant an opportunity to be heard regarding the payment of contribution*

*and interest, if any, for the period from 01/07/1996 to 31/08/1997.”*

6. Subsequently, the Corporation inspected the records of the respondent and the respondent paid all the dues as ordered from 01/07/1996 to 31/08/1997.

7. On 20/08/2003, the respondent received a show cause notice from the Corporation, calling upon them to show cause as to why the respondent should not be prosecuted for failure to produce the records, including books of accounts for the period from inception to 30/06/1996. It was claimed that the respondent had failed to produce the said record before the Insurance Inspector on 7<sup>th</sup> and 8<sup>th</sup> April, 2003. The respondent claimed that it informed the Inspector that since the ESI Court, by an order dated 02/08/2002, had decided the controversy about the applicability of the Act of 1948 from 01/07/1996 to 31/08/1997, the books for the said period were produced for inspection. It was also informed that records prior thereto were destroyed. It was also informed that the dues for the period, namely 01/07/1996 to 31/08/1997 were already deposited.

8. It appears that the respondent was in receipt of the

letter dated 23/02/2004 from the Corporation, directing them to comply with the provisions of the Act of 1948 with effect from 02/07/1977. The respondent, by a letter dated 30/03/2004, informed the Corporation that the establishment is voluntarily covered from 01/09/1997. Furthermore, the ESI Court, by an order dated 02/08/2002, had held that the coverage is from 01/07/1996. Thus, the matter of coverage and contribution stood closed. It was also reiterated that the records prior to 01/07/1996 were already destroyed and a direction to comply with the provisions of the Act of 1948 from 02/07/1977 would cause irretrievable prejudice. It was also contended that Section 77(1-A)(b) of the Act of 1948 restricts the recovery of said contribution for a period of 5 years prior to such claim. The respondent also deposited a sum of Rs.5,68,041/- towards the contribution from 02/07/1977 to 30/06/1996 under protest. The respondent, thereafter, by a communication dated 16/09/2004, claimed refund of the said amount, along with interest, placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Employees State Insurance Corporation Vs. Hyderabad Race Club***, reported in 2004(4) CLR 76. The appellant Corporation, by an order dated 25/05/2005, rejected the said claim while claiming an interest of Rs.12,57,144/- on the contributions for the said period. Aggrieved by the order dated 25/05/2005, the respondent approached the

ESI Court by an application under Section 75 read with Section 77 of the Act of 1948.

9. The ESI Court, by its judgment and order dated 10/09/2007, has allowed the application as aforesaid, directing the refund of the amount of Rs.5,68,041/- and holding that the appellant Corporation is not entitled to claim interest. That is how, the Corporation is before this Court.

10. I have heard Smt. Agni, the learned Senior Counsel for the appellant and Shri Sardessai, the learned Counsel for the respondent.

11. It is submitted on behalf of the appellant that in so far the claim of the Corporation being barred by limitation is concerned, the same stands concluded by the decision of the Hon'ble Supreme Court in the case of **ESI Corporation Vs. C. C. Santha Kumar**, reported in (2007)1 SCC 584. It is submitted that the ESI Court has relied upon a Full Bench decision of the Kerala High Court in **Regional Director, ESIC Vs. Kerala Electrical Allied Engineering Company Ltd.**, reported in 2003-III-LLJ 768, in preference to the decision of the Division Bench of the Madras High Court in the case of **Standard Literature Co. (P) Ltd Vs.**

***Employees State Insurance Corporation Ltd.***, reported in 2003-11-CLR-559. It is submitted that in the case of ***Santha Kumar*** (supra), the Hon'ble Apex Court has upheld the decision of the Madras High Court, while holding that the decision of Full Bench of the Kerala High Court in the case of ***Regional Director, ESIC Vs. Kerala Electrical Allied Engineering Company Ltd.***, is not correct. It is submitted that thus, the finding on the issue no.2 as regards limitation, as framed by the ESI Court, has to be in the favour of the appellant. In so far as the question of delay and laches is concerned, it is submitted that the legal position as to whether the Head Office / establishment looking after the administrative work of the Company, engaged in the mining business, would be covered by the provisions of the said Act, was nebulous at the relevant time. It is submitted that the legal position was ultimately settled by the decision of the Hon'ble Supreme Court in the case of ***Damodar Mangalji and Co. Vs. Regional Director***, reported in (2001)3 SCC 321. It is submitted that the respondent Company was aware and conscious of the fact that the issue about the applicability was not finally settled and as such, it cannot be accepted that the Company could have destroyed the record pertaining to the period starting from the year 1977. The learned Senior Counsel has submitted that the provisions of the Act of 1948 are beneficial in nature, aimed at

securing various benefits to the employees of the factories and establishments as mentioned thereunder. The learned Senior Counsel has submitted that no straight jacket formula can be prescribed for determining reasonable time within which the Corporation can claim compliance and the contributions under the Act. It is submitted that as held by the Hon'ble Supreme Court in the case of **Santha Kumar** (supra), the same would depend upon the facts and circumstances of each case. The learned Senior Counsel has placed reliance on paragraph 36 of the judgment in the case of **Santha Kumar** (supra), in order to submit that the respondent in such case has to plead and prove that there was grave and irretrievable prejudice caused to it on account of delay by the Corporation in seeking compliance with the Act. The learned Senior Counsel was at pains to point out that there are no pleadings much less proof of any such prejudice of an irretrievable nature caused to the respondent in the present case. It is, therefore, submitted that the respondent cannot justifiably place reliance on ground of delay and laches. Reliance is then placed on yet another decision of the Hon'ble Supreme Court in the case of **Employees' State Insurance Corporation Vs. M/s Harrison Malayalam Pvt. Ltd.**, reported in AIR 1993 SC 2655, in order to submit that obligation to make contribution subsists even where the employee ceases to be so, after contribution period. Reliance

is then placed on the decision of the Hon'ble Supreme Court in the case of ***Fertilizers and Chemicals Travancore Limited vs. Regional Director, ESIC and others***, reported in (2009)9 SCC 485, to submit that it is for the ESI Court to have made proper investigation of the fact after obtaining evidence from the parties, including the workmen concerned. Reliance is then placed on the decision of the Hon'ble Supreme Court in the case of ***Employees' State Insurance Corporation Vs. Hyderabad Race Club***, reported in AIR 2004 SC 3972, in which it has been held that once the legal position about the coverage was finally settled, the same would come into force from inception and not from the date of the decision, settling the legal issue. It is submitted that the ESI Court has not properly appreciated the circumstances and the evidence on record and thus, the impugned judgment needs interference.

12. On the contrary, it is submitted by the learned Counsel for the respondent that an appeal under section 82 of the Act of 1948 lies only on a substantial question of law and not otherwise. It is submitted that thus, the finding, which are purely based on facts and appreciation of the evidence would not be open to challenge in such appeal. The learned Counsel has placed reliance on the decision of this Court in ***Dainik Deshdoot and others Vs.***

***Employees State Insurance Corporation Ltd***, reported in 1995-I L.L.N. 578. The learned Counsel has basically advanced two contentions, namely, delay and laches and relevant legal position being nebulous, in order to submit that no recovery of the contribution could be made for the period prior to 01/07/1996. The learned Counsel has taken me through the contents of the application, in order to submit that specific pleadings about there being irretrievable prejudice, have been made. It is submitted that in the present case, there is voluntary coverage from 01/09/1997 and by order dated 02/08/2002, the ESI Court had further extended the coverage for the period from 01/07/1996 to 31/08/1997. It is submitted that thus, the issue of coverage stood closed. It is submitted that the Insurance Inspector was also informed and had accepted about the destruction of the record. It is submitted that the ESI Court has rightly considered the fact that the reconstruction of the record, at such distance of time, was not possible. It is submitted that the Corporation has to act as a watch dog and not as a blood hound. It is submitted that the question of there being delay and laches and the finding thereon as recorded by the ESI Court on appreciation of the evidence, would be a finding on fact, not amenable to challenge in the present appeal.

13. In reply, it is submitted on behalf of the appellant that where the finding recorded by the Court below is either based on no evidence or is found to be perverse, the same would amount to a substantial question of law and can be gone into.

14. I have considered the rival circumstances and the submissions made.

15. It is not in dispute that the concerned establishment of the respondent is voluntarily covered with effect from 01/09/1997. Further, it is a matter of record that in pursuance of the order dated 02/08/2002 passed in ESI Case No.25/2000 (New), the appellant, by a letter dated 11/06/1997, had provisionally covered the establishment with effect from 01/07/1996. Consequent upon that the respondent had deposited the contribution for the period from 01/07/1996 to 31/08/1997. The dispute thus, essentially pertains to a claim of coverage from 02/07/1977 to 30/06/1996. It is also undisputed that the respondent has deposited an amount of Rs.5,68,041/- as contribution for the said period under protest. It is when the respondent sought refund of the said amount on the ground that there could not have been coverage prior to 01/07/1996 that the appellant not only refused to refund the said amount, but claimed interest thereon of Rs.12,57,144/-. The

respondent had approached the ESI Court on the ground that on account of the decision in the ESI case No.25/2000 (new), on 02/08/2002, the matter about the coverage stood finally concluded. It is, thus, contended that merely because the Corporation has said about “provisional coverage”, in the letter dated 11/06/1997, that would not be decisive. The ESI Court has accepted that merely because the appellant mentions that it was a provisional coverage, would not be decisive. Secondly, it is contended that the claim would be barred by limitation as it was made beyond a period of five years. Thirdly, it was claimed that the claim suffered from grave and serious laches as the claim was being made after more than 19 years. It is contended that the concerned regulations require the preservation of the record only for a period of 5 years and the respondent cannot be expected to preserve the record for such a long period and it would cause grave and serious prejudice. A perusal of the judgment of the ESI Court would show that the grounds, both based on limitation as well as laches, have been accepted. It has also been found that the establishment was voluntarily covered from 01/09/1997. The dispute for the period from 01/07/1996 to 31/08/1997 had also attained finality.

16. Insofar as the substantial question of law framed at

point Nos.2(a) and (b) are concerned, the same may not detain me long, in view of the decision of the Hon'ble Apex Court in the case of **Santha Kumar** (supra). In paragraph 12 of the judgment, the ESI Court, placing reliance on the Full Bench decision of the Kerala High Court in **Regional Director, ESI Corporation Vs. Kerala Electrical Allied Company Limited**, (supra), has held that in terms of proviso to Section 77(1-A)(b) of the Act, the claim for contribution has to be made only within five years from the date claim arose and the claim beyond the said period is not tenable. The Division Bench of the Madras High Court in the case of **Standard Literature Co. (P) Ltd.** (supra) had held otherwise. In the case of **Santha Kumar** (supra), it has been, *inter alia*, held by the Hon'ble Apex Court in paragraph 32 of the judgment that the view taken by the Division Bench of the Madras High Court is the correct position of law. In that view of the matter, the point Nos.2(a) and (b) have to be answered in favour of the appellant and the bar of limitation would not come in the way.

17. This takes me to the issue about delay and laches. In the case of **Santha Kumar** (supra), the Hon'ble Apex Court has adverted to the question whether the concept of reasonable time can be read into the provisions even though not specifically provided for. The Hon'ble Apex Court held in paragraph 33

onwards as under :

*“33. That brings us to the other question i.e. whether a concept of reasonable time can be read into the provision even though not specifically provided for? Similar questions have arisen in several other statutes.*

*34. In Hindustan Times Ltd. v. Union of India (1998 (2) SCC 242), this court dealt with the power to recover damage under Sections 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short the '[Provident Fund Act](#)'). There also the question arose as to whether in the absence of any period of limitation the authority under the Provident Funds Act could recover the damages after a long period of time. It was inter alia held as follows : (SCC pp, 254-55, para 29)*

*"The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show-cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on plea of power-cut, financial problems relating to other indebtedness or the delay in realization of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape*

*liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under Section 14-B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under Section 14-B would be taken; mere delay in initiating action under Section 14-B cannot amount to prejudice inasmuch as the delay on the part of the Department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under Section 14-B he has changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature; he might also claim prejudice upon proof of loss of all the relevant records and/or non availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show*

*cause notice and must satisfy the authority concerned with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect."*

35. A "reasonable period" would depend upon the factual circumstances of the case concerned. There cannot be any empirical formula to determine that question. The court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.

*In State of Gujarat v. Patel Raghav Natha (1969 (2) SCC 187), it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied. This aspect does not appear to have been specifically kept in view by the Division Bench. Additionally, the points relating to applicability of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, and even if it is held that the Act was applicable, the reasonableness of the time during which action should have been initiated was also not considered. It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like*

*the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongs to the knowledge of the law, and therefore to be decided by the courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not a number and measure what is not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. (See: Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar (1987 (4) SCC 497) and [Gujarat Water Supply & Sewerage Board v. Unique Erectors \(Gujarat\) \(P\) Ltd.](#) (1989 (1) SCC 532). As observed by Lord Romilly, M.R. in *Labouchere v. Dawson* (41 LJ Ch 472) it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case.*

*These aspects were highlighted in [Collector and Others v. P. Mangamma and Others](#); SCC pp 491-92, paras 5-6.*

18. It can, thus, be seen that the concept of a reasonable period would depend upon the facts and circumstances of the case and there cannot be any empirical formula to determine the question. The Court has to look into all the relevant circumstances to decide whether the claim was made within the reasonable period. It would be further clear that merely because the proceedings are initiated after several years, cannot by itself be ground for drawing inference of waiver. It was urged on behalf of the appellant that mere delay in making a demand cannot amount to prejudice inasmuch as the delay on the part of the department would have only allowed the employer to use the monies for his own purpose or for his business. This, however, comes with a rider namely the employer can claim prejudice, if the employer can show that during this period, he has changed his position to his detriment to such an extent that if the recovery is made, there would be a prejudice of an irretrievable nature to him. The employer must show that it is not possible to reconstruct the record or produce the evidence or on some similar grounds, demonstrate irretrievable prejudice which should not only be a defence in the reply to the show cause notice, but must also satisfy the authority concerned with acceptable material. The Hon'ble Apex Court in the case of **Santha Kumar** (supra), has further held that this cannot be raised in the High Court unless there is a clear

pleading in the Writ Petition to that effect.

19. It has, thus, to be seen whether the respondent has been able to demonstrate such an irretrievable prejudice. The only ground, on which the respondent is claiming that there would be a prejudice, is that the records are already destroyed. It is contended that the Inspector was so informed about the destruction of the records during his visit on 7<sup>th</sup> and 8<sup>th</sup> April, 2003. The ESI Court has considered the evidence of Fatima Fernandes (PW1), who is an Inspector working with the Corporation. The Court has considered that the witness had not visited the establishment of the respondent from the year 1977 to 1996 and had no personal knowledge about any document to show that the establishment had fulfilled the conditions required for coverage with effect from 1977. It would be, however, necessary to see the evidence of Shri D. P. Sinha (AW1) on behalf of the respondent. This witness was General Manager of the respondent and working with the respondent since 1972. This witness has in categorical terms stated that the respondent (applicant before the ESI Court) has service card and personal files of the employees and the same were shown to the Inspector. He further admitted that the contributions were calculated on the basis of the personal file and the service card of the employer for the period

from 02/07/1977 till 30/06/1996. He, however, denied that the respondent is liable to be covered from 02/07/1977. Thus, in my considered view, the material ground of prejudice on account of non-availability of the records clearly falls apart in the face of the evidence of AW1. As noticed earlier, the respondent has paid the contribution for the disputed period, albeit under protest and if this fact is read along with the evidence of AW1 it is clear that contribution was calculated on the basis of the personal files and service cards of the employees. Thus, in my humble opinion, the ground about “irretrievable prejudice”, on account of the demand being made for the disputed period belatedly, cannot be accepted. With respect, this part of the evidence of AW1 has not been noticed by the learned ESI Court. Thus, in my view, the claim for refund of the amount of contribution cannot be sustained.

20. This takes me to the question of interest. Section 39 of the Act of 1948 provides for contributions. Section 39(5)(a), which is relevant for the purpose reads as under :

**“39.Contributions-** (1) *The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's*

*contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.*

*(2)....*

*(3)....*

*(4)....*

*(5)(a). If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment :*

*Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank."*

21. It can, thus, be seen that the liability to pay interest on contributions, which are not paid on the date on which such contribution has become due, invites interest as provided for under Section 39(5)(a) of the Act of 1948 read with Regulation 31-A of the Employees State Insurance (General) Regulations, 1950 (Regulations of 1950, for short). It would be clear that the liability to pay interest in such a case is statutory. It is now well settled that the liability to pay interest being statutory in nature, cannot be waived by the Corporation or otherwise. (See. **Goetze (India) Ltd. Vs. Employees State Insurance Corporation**, reported in

(2008)8 SCC 705). In the present case, the letter dated 25/05/2005 (exhibit 38) would show that the appellant has charged interest at the rate of 15 % p.a., in arriving at the amount of Rs.12,57,144/-. It does appear that Section 39(5)(a) of the Act of 1948, as it exists today, was inserted by Act No.29/1989 with effect from 20/10/1989. The Regulation No.31-A of the Regulations of 1950, as it exists today, was substituted by a notification dated 09/03/1983 with effect from 26/03/1983. Both Section 39(5)(a) of the Act of 1948 and the Regulation No.31-A of the Regulations of 1950 provide for simple interest at the rate of 12 % p.a. Under Section 39(5)(a), before its amendment with effect from 20/10/1989, the interest rate was 6 % p.a. Thus, the Corporation could not have charged interest at the rate of 15 % p.a., as has been done and as is apparent from letter dated 25/05/2005 (exhibit 38). Thus, I find that while the appellant would be entitled to the statutory interest, the appellant will have to rework/ recalculate the same as per the rates permissible under Section 39(5)(a) of the Act of 1948 and the Regulation No.31-A of the Regulations of 1950. In that view of the matter, the appeal has to be partly allowed. Hence, I proceed to pass the following order :

ORDER

- (i) The appeal is partly allowed.

(ii) The impugned judgment and order, declaring that the respondent establishment is not liable to pay contribution for the period from 02/07/1977 to 30/06/1996 under ESI Act, as also the order directing the refund of the said contribution, is hereby quashed and set aside.

(iii) The impugned judgment and order, declaring that the respondent is not liable to pay interest, is also set aside. Consequently, the respondent shall also be liable to pay interest. However, the appellant Corporation shall recalculate the interest at the rates as may be permissible under section 39(5)(a) of the Act of 1948 and the Regulation No.31-A of the Regulations of 1950.

(iv) In the circumstances, there shall be no order as to costs.

**C. V. BHADANG, J.**

SMA