sTHE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.108 OF 2008

JUDGMENT:

This appeal, by the appellant/petitioner under Section 82 (2) of the Employees' State Insurance Act, 1948 (for brevity, 'the Act') is directed against the order, dated 02.01.2008, of the learned Chairman, Industrial Tribunal-I, Hyderabad passed in I.A.No.208 of 2005 in E.I.C (sr) No.2617 of 2005 filed under Section 75 (2-B) of the said Act requesting to waive the condition with regard to deposit of 50% of the disputed amount.

2. I have heard the submissions of learned counsel for the appellant and the learned Standing Counsel for the 1st respondent Corporation. I have perused the material record.

3. In the grounds of appeal, the appellant/petitioner raised the following substantial question of law.

> **"Whether the Court below is right in passing the impugned order directing the appellant to deposit further 25% of the disputed amount contrary to the provisions of Section 75 (2-B) of the Act."**

4. The case of the appellant is this:

The appellant is a small factory engaged in manufacture of electrical circuits with limited employment strength. The factory was not functioning since 1990 due to shortage of funds and stiff competition from other manufacturers manufacturing similar circuits. The first step towards closure of factory was taken on 01.10.2000 and finally, the factory was closed on 01.03.2001. The said fact was informed to Employees State Insurance Corporation by writing various letters. In the circumstances, the delay had occurred in payment of the dues including contributions under the Act. The machinery in the factory was also subsequently sold and the entire sale consideration received was paid towards contributions and dues. Thus, an amount of Rs.1,24,973/- was paid and the said fact was evident from letter dated 15.03.2005. While so, the 2nd respondent-Recovery Officer of the Corporation had issued a notice under Section 45-G of the Act to transfer an amount of Rs.2,85,130/- from the bank account of the appellant to the E.S.I. Corporation towards dues. The main appeal is filed assailing the said impugned notice of the 2nd respondent. However, as the appellant is unable to deposit 50% of the disputed amount as claimed in the impugned notice of the 2nd respondent, the instant application was filed to waive the statutory condition to deposit 50% of the disputed amount.

5. The case of the respondents is this:

As per the particulars furnished, the appellant is due in a sum of Rs.2,64,216/- and it is liable to pay the said amount. The appellant has to deposit 50% of the disputed amount, in case it intends to challenge the notice issued by the 2nd respondent. There is no provision under law, empowering the Court to waive the statutory condition, which requires the appellant to deposit 50% of the amount. Even otherwise, no case is made out by the appellant for waiving the statutory provision which obligates it to deposit 50% of the amount.

6. No oral evidence was adduced before the Tribunal, however, exhibits P1 to P21 were marked.

7. On merits, the Tribunal had allowed the petition in part and directed the appellant to deposit 25% of the amount claimed under the impugned order on or before 18.01.2008 and further said that on failure to do so, the petition shall stand dismissed.

8. Feeling aggrieved of the said order, the present appeal is filed by the appellant/petitioner.

9. The learned counsel for the appellant contended as follows:

The factory is a small establishment. Due to financial stringency and stiff competition in the market, the factory was closed in the year 2001. Machinery of the factory was also sold and the entire sale consideration was paid towards dues and contributions. The appellant is not in a position to pay any further amounts having paid a sum of Rs.1,43,317/-. Further, the payments made by way of challans were not given credit properly by the Corporation. As the amount claimed in the impugned notice is not due, the notice was challenged in the main appeal. In the circumstances, the appellant had prayed to waive the condition to deposit 50% of the disputed amount. Without properly considering the facts and by not exercising the power, which the Tribunal is having, the impugned order was erroneously passed.

10. The learned Standing Counsel for the Corporation while supporting the order of the Tribunal had stated as follows: "As per the statutory mandate, the appellant is under an obligation to deposit 50% of the disputed amount and waiver is impermissible under law. The Court below has considered all the documents and accepted all the amounts paid by way of challans. The said contention cannot be a ground to waive the statutory condition. The well reasoned order of the Tribunal does not call for interference. No substantial question of law is involved in this appeal. The appeal is liable to be dismissed."

11. The facts leading to the filing of the appeal are already noted supra, in detail. I have bestowed my attention to the facts and the submissions which are noted above.

12. Section 75 (2-B) of the Act reads as follows:

> **"No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation: Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section."**

13. Admittedly, the appellant is challenging the notice issued by the 2nd respondent, who is Recovery Officer of the Corporation, whereunder a demand was made to transfer an amount of Rs.2,85,130/- from the bank account of the appellant to the E.S.I Corporation towards dues. Without depositing the amount as claimed in the notice of the 2nd respondent, the appellant having preferred the proposed appeal before the Court below/Industrial Tribunal had sought waiver of the requirement in regard to deposit of 50% of the amount mentioned in the notice as due and payable. Except stating that the factory was closed and that in the circumstances the appellant is placed, the appellant is not in a position to deposit 50% of the disputed amount, no other grounds are made out. Financial stringency is not a ground to grant waiver in view of the avowed objective of the Law, which is a welfare legislation. Moreover, the learned counsel for the appellant could not point out any provision of law which permits this Court or the Court below to grant waiver. Apart from the incapacity to pay, the other contention is that all the payments, which were made during the period between 15.11.1995 to 23.12.2000, were not given credit. The Tribunal having examined the documentary evidence and the details that were furnished by the respondents in regard to the various amounts paid by way of challans had found that the payments made by way of challans were given credit, as per the details furnished and the documents made available and that the contention of the appellant that the amount claimed in the impugned notice is incorrect is a contention, which cannot be countenanced. Having recorded reasoned findings, the Court below had held that in the facts and circumstances of the case and under law, the appellant/petitioner is not entitled to seek waiver of the condition in regard to deposit of the 50% of the amount covered by the notice, which the appellant intended to impugn in the proposed appeal.

14. Having regard to the reasons, this Court finds that the Tribunal is justified in allowing the petition in part and directing the appellant to deposit 25% of the claimed amount in the impugned notice and that the well reasoned order needs no interference by this Court. Even otherwise, no substantial question of law is involved in this appeal. Viewed thus, this Court finds that the appeal is devoid of merit and is liable to be dismissed.

15. Accordingly, the appeal is dismissed confirming the order, dated 02.01.2008 in I.A.No.208 of 2005 in E.I.C (sr) No.2617 of 2005 passed by the learned Chairman, Industrial Tribunal-I, Hyderabad. It is needless to mention that the appellant is at liberty to deposit now, if the appellant so desires, the amount due and payable as per the orders of the Tribunal and make a request to the Tribunal to entertain the main appeal. In case the appellant chooses to so deposit, it is made clear that the time for making the necessary deposit is one month from the date of receipt of a copy of this judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SEETHARAMA MURTI, J

SEPTEMBER 14, 2015

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