THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CMA No.321 of 2005

JUDGMENT:

1 This appeal is filed under Section 82 of the Employees State Insurance Act, assailing the order dated 30.12.2004 passed in E.I.Case No.53 of 2001 on the file of the Employees Insurance Court-cum-Chairman, Industrial Tribunal-I at Hyderabad, wherein and whereby the notice dated 14.02.2001 is set aside, by reducing the rate of interest from 15% to 7.5% p.a.

2 For the sake of convenience, parties to this appeal shall, hereinafter, be referred to as they are arrayed before the lower authority.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 The petitioner is a proprietary concern engaged in rice mill business. The petitioner used to purchase paddy from the farmers and does milling of the same to convert paddy into rice. The petitioner carried on its work for less than seven months in a year and hence the provisions of the Employees State Insurance Act (for short 'the Act') will not be applicable to it. The respondent Corporation started considering the rice mill business as regular practice and started claiming contributions. The respondent Corporation filed Criminal Case against the petitioner, vide C.C.No.275 of 1999, on the file of Economic Offences Court, Hyderabad. During the course of said proceedings, the petitioner paid the actual amount as per their records to avail the benefit of amnesty scheme introduced by the Government of India. In the said case, an amount of Rs.17,697/- was claimed for the period from October 1995 to January 1996 on adhoc basis. After receipt of the said amount, on actual basis, the respondent Corporation has issued notice bearing No.AP.Ins-V/52-10495-05, dated 14.02.2001 claiming interest of Rs.13,903/- for the period from October 1995 to 06.05.2000 and further amount of Rs.52,449/- towards interest for the period from 01.07.1989 to 30.09.1995 totalling to Rs.66,352/-. The contributions were demanded from 1989 onwards and interest was also claimed from 01.07.1989 onwards though the Act is not applicable to the petitioner's rice mill. Therefore, the claim made by the respondent Corporation is illegal and unjustified and the same is liable to be set aside. The petitioner further stated

that no opportunity was given to it before imposing such huge amount towards interest and even the opportunity of personal hearing was also not accorded to the petitioner, which amounts to violation of principles of natural justice. Hence the petition.

5 The respondent Corporation filed written statement denying all the averments made in the petition including that of non-affording of opportunity of personal hearing. During the course of inspection by the officials of the Corporation it was observed that the petitioner was engaged in the rice milling business with the aid of power and employed 10 employees for wages and it was covered under the Act with effect from 01.07.1989 i.e. 'A' day. The petitioner also submitted Form-01 as required under Regulations 10 B of ESI (General) Regulation 1950. Basing on the aforesaid reports, the coverage intimation was sent to the petitioner on 13.10.1995 with a request to start the compliance under the provisions of the Act, as such, the action taken by the respondent Corporation is perfectly legal, valid and within the jurisdiction. The Government of India has discontinued the exemption to rice mills with effect from 01.07.1989 and all the rice mills were brought under coverage of E.S.I. Act 1948 subject to the provisions of Section 2 (12) / Section 1 (5) of the Act. The petitioner's rice mill which is situated at Tadepalligudem was amenable under the Act with effect from 01.07.1989 itself. The petitioner has not paid the contribution as contemplated under the provisions of the Act. The petitioner is a total defaulter in payment of contribution and the Corporation has assessed the contribution under Section 45-A of the Act while affording an opportunity of personal hearing and the proposed interest was also reflected in the order issued under Section 45-A itself and hence it is not correct to say that no opportunity was given. The order passed by the respondent Corporation dated 14.02.2001 is therefore, perfectly justified and is a valid one. The respondent Corporation, by virtue of the powers vested under section 97(2) (iii a) which also came into force with effect from 20.10.1989, has amended the Regulation 31-A making the rate of interest @ 15% p.a. with effect from 01.09.1994. Hence the petitioner is liable to pay interest @ 6% p.a. up to 10.10.1989, 12% p.a. from 20.10.1989 to 31.08.1994 and at 15% p.a. from 01.09.1994 and thereafter. Hence the petition is liable to be dismissed.

6 During the course of enquiry, on behalf of the petitioner P.W.1 was examined

and Exs.P.1 to P.3 were marked and on behalf of the respondent-Corporation R.W.1 was examined and Exs.R.1 to R.3 were marked.

7 Basing on the oral, documentary evidence and other material available on record, the Employees Insurance Court arrived at a conclusion that the respondent is entitled to interest at 7.5% p.a. instead of 15% p.a. as claimed. Feeling aggrieved by the said order of the E.I.Court, the respondent – Corporation has preferred this miscellaneous appeal.

8 The contention of the learned counsel for the appellant / respondent submitted that the E.I.Court has not rightly considered the scope of Section 39 (5) r/w Regulation 31 A of the Act and reduced the rate of interest. He further submitted that the E.I.Court has no jurisdiction whatsoever to reduce the rate of interest *de hors* the provisions of the Act.

9 *Per* contra, the learned counsel for the respondent /petitioner submitted that the impugned notice is not legally sustainable as the respondent Corporation has violated the principles of natural justice. He further submitted that the E.I.Court has rightly reduced the rate of interest.

10 Now the point that arises for consideration is whether the E.I.Court is justified in reducing the rate of interest from 15% p.a. to 7.5% p.a.

11 It is an admitted fact that the petitioner carried on rice milling business during the relevant period. The petitioner also paid the contribution during the pendency of C.C.No.275 of 1999. The petitioner also paid Rs.13,903/- towards interest for the period from October 1995 to 06.05.2000. The fact remains that the respondent got issued a notice dated 14.2.2001 directing the petitioner to pay an amount of Rs.66,352/- towards interest for delayed payment of contribution.

12 The learned counsel for the petitioner attacked the legality of the notice dated 14.02.2001 on the pretext of not giving a reasonable opportunity to the petitioner. To substantiate the argument, he has drawn my attention to **Arcot Textile Mills Ltd vs. Regional Provident Fund Commissioner** wherein the Hon'ble apex Court held as under:

> 28. Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay.

> Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the Competent Authority.

13 The petitioner has taken a specific plea in the petition that no opportunity was given to it. The respondent Corporation denied this aspect in page No.5 of its written statement. The petitioner has not filed rejoinder denying the stand taken by the respondent in its written statement. A perusal of the written statement at a glance manifestly makes it clear that the respondent Corporation has given a reasonable opportunity to the petitioner to submit its explanation to the notice dated 09.02.2001. The fact remains that the petitioner has not approached the respondent Corporation disputing the application of the provisions of the Act to the petitioner's proprietary concern and consequential non-entitlement of charging interest. On the other hand, the petitioner has approached the E.I.Court without submitting explanation the reasons. P.W.1 in the chief examination categorically stated that they received Ex.P.1 notice on 09.02.2001 (Ex.P.1). His evidence further reveals that the respondent Corporation waited up to 13.02.2001 and issued Ex.P.2 notice. In the cross-examination P.W.1 in unequivocal terms deposed that he did not approach the respondent Corporation after receiving Ex.P.1 notice dated 09.02.2001. The material available on record clinchingly establishes that the respondent Corporation has afforded a reasonable opportunity to the petitioner to submit the objections if any. The E.I.Court also has given a specific finding that the stand of the petitioner that the respondent Corporation has violated the principles of natural justice is not sustainable either on facts or on law. For the reasons best known to the petitioner, the petitioner did not chose to challenge the above said finding of the E.I Act by filing a regular appeal. The petitioner having allowed the said finding of the E.I Court to become final, is estopped to agitate the same in this appeal. The decision cited supra is not applicable to the facts of the case on hand. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the notice dated 14.02.2001 is vitiated in view of violation of principle of natural justice.

14 One of the contentions of the learned counsel for the petitioner is that the provisions of the Act are not applicable to the petitioner's rice mill. A perusal of the record reveals that for certain period the Central Government has given exemption to the rice mills. The material placed on record clinchingly

establishes that the provisions of the Act are applicable to the rice mills also in the State of Andhra Pradesh with effect from 01.07.1989. It is not the case of the petitioner that it has paid the contribution as contemplated under the provisions of the Act. The fact remains that the petitioner has not paid the contribution within the stipulated period. The E.I.Court also gave a specific finding that the petitioner has not paid the contributions in time. For obvious reasons, the petitioner did not choose to challenge the finding of the E.I.Court on this aspect and hence the said finding of the E.I.Court became final.

15 The learned counsel for the petitioner has drawn my attention to Employees State Insurance Corporation Vs. M/s. Hotel Kalpaka International wherein the Hon'ble apex Court held as follows:

> The Insurance Court as well as the High Court have correctly upheld the demand for contribution. But it is rather strange to conclude that the demand could not be enforced against a closed business. If this finding were to be accepted it would not promote the scheme and avoid the mischief. On the contrary, it would perpetrate the mischief. Any employer can easily avoid his statutory liability and deny the beneficial piece of social security legislation to the employees, by closing down the business before recovery. That certainly is not the indentment of the Act. To hold, as the High Court has done, would set at naught all these beneficial provisions.

16 As per the principle enunciated in the case cited supra, the Corporation is entitled to recover the contribution even after closure of the unit. Taking into consideration the facts and circumstances of the case and also the principle enunciated in the case cited supra, I have no hesitation to hold that the petitioner has not paid the contribution within the stipulated time and is thereby liable to pay interest.

17 The material available on record reveals that the respondent claimed interest of Rs.16,280/- from 01.07.1989 to 31.01.1993, Rs.36,169/- from 01.02.1993 to 30.09.1995, Rs.10,841/- from 01.10.1995 to 31.12.1996 and Rs.3,062/- from 01.01.1997 to 30.06.2000, totalling to Rs.66,352/-.

18 The E.I.Court reduced the rate of interest taking aid of Section 75 of the Act. As per the provisions of the said section, the E.I.Court can resolve the dispute between the parties. However, Section 75 is silent with regard to the powers of the E.I.Court to reduce the rate of interest claimed by the respondent. Section 39 of the Act deals with payment of contribution. Section 39 (5) (a) of the Act reads as under:

> Sec. 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.

19 A perusal of this Section at a glance clearly indicates that the employer is liable to pay interest on delayed payment of contribution. For better appreciation, it is apposite to refer to Regulation 31-A of the regulations, which reads as under:

> 31-A: **Interest on contribution due, but not paid in time:-** An employer who fails to pay contribution within the periods specified in Regulation 31, shall be liable to pay (simple interest at the rate of fifteen per cent per annum) in respect of each day of default or delay in payment of contribution.

20 Prior to 01.01.1994, the rate of interest charged was only 12% p.a. But with effect from 01.01.1994, the Corporation is entitled to charge the interest at 15% p.a in view of amendment to regulation 31-A. A fascicular reading of Section 39 (5) (a) and Regulation 31-A clearly demonstrates that the Corporation is entitled to claim interest as prescribed under the Act. It is not the case of the petitioner that the respondent Corporation has not charged the rate of interest as stipulated under the provisions of the Act. When the Act itself contemplates or prescribes the specific rate of interest to be charged, the E.I.Court is not empowered to reduce the rate of interest. The learned counsel for the petitioner has not drawn my attention to any of the provisions of the Act, which enables the E.I.Court to exercise its discretionary power thereby to reduce the rate of interest.

21 At this juncture, the learned counsel for the respondent has drawn my attention to the ratio laid down in **E.S.I. Corporation Vs. Bagsvig** wherein the Kerala High Court held as follows:

> 3. Section 39(5)(a) of the Employees' State Insurance Act provides that 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 12% per annum. This is a statutory provision. The dates when contributions are due are also fixed in the statute. Merely because the E.I. Court has granted instalment facility to pay off the principle contributions, it cannot be stated that statutory interest is waived. Employees' Insurance Court has no authority to waive the statutory interest. The amount due has to be paid to the Corporation from the respective dates when they became due with proportionate interest till the payment is effected.

22 The facts of the case on hand are identical to the facts of the case cited supra. Having regard to the facts and circumstances of the case and the principle enunciated in the case cited supra, I am of the considered view that the E.I.Court is not justified in reducing the statutory rate of interest prescribed

under the Act.

23 For the foregoing discussion, the appeal is allowed and the order dated 30.12.2004 passed in E.I.Case No.53 of 2001 on the file of the Employees Insurance Court-cum-Chairman, Industrial Tribunal-I at Hyderabad is hereby set aside.

24 Consequently, miscellaneous petitions if any pending in this miscellaneous appeal shall stand closed. No order as to costs.

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T.SUNIL CHOWDARY, J.

Date: June, 2015.

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