

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST). NO.30175 OF 2016

M/s.ISS Facility Services India Pvt. Ltd. .. Petitioner

vs.

Shri Surajit Das, The Appellate Authority,
The Employees State Insurance Corporation
& Anr. .. Respondents

Mr.S.C.Naidu a/w Mr.Aniketh Poojari and Mr.Raghav Raj i/b
M/s.C.R.Naidu and Co. for the petitioner

Mr.H.V.Mehta for the respondent

CORAM : K. K. TATED, J.
DATE : NOVEMBER 23, 2016

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 By consent, matter is taken on board for final hearing at the stage of admission itself.
- 3 By this Petition under Article 227 of Constitution of India, the petitioner challenges the order dated 17.10.2016 passed by Director, Appellate Authority Employees' State Insurance Corporation, Mumbai rejecting petitioner's appeal preferred under section 45AA of the ESI Act, 1948 on 19.7.2016 on the ground that same was filed beyond the period of limitation by one day.
- 4 The learned Counsel for the petitioner submits that in the present

proceedings, Deputy Director, Employees' State Insurance Corporation, Mumbai passed order under section 45-A of ESI Act, on 19.4.2016. Same was received by the petitioner on 2.7.2016. Thereafter they filed Appeal under section 45-AA of the said Apex Court on 19.7.2016 i.e. within period of limitation i.e. 60 days. He submits that these facts were not considered by the authority at the time of passing order/letter dated 17.10.2016. He submits that Joint Director (Revenue), ESIC by its letter dated 15.10.2015 clarified the period of limitation for appeal under section 45AA of the said Act to the Regional Director/Director I//c and other authority which reads thus:

“Please refer to the provisions u/s.45AA of the Act. Under this provision an employer, who is not satisfied with the order u/s 45A, can prefer an appeal before the Appellate Authority within sixty days of the date of such order. Any delay in communicating the order deprives the person concerned the actual time provided to him under the provision.

The matter has been examined. The expression “the date of such order” has to be construed as meaning the date of communication or knowledge of the order to the person concerned so that the remedy provided to a person under the law would not render the provision nugatory. The words, “the date of such order”, therefore mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed.

The Authorized Officers passing order u/s 45A of the ESI Act are advised to ensure that the duly signed copy of the order is scanned and mailed to the registered e-mail of the employer/person(s) concerned, preferably on the day of passing such order, in addition to delivery of

the order by post/other means.

This issues with the approval of the Director General.”

5 He further submits that our Hon'ble Court in the **Buldana Urban Co-operative Society Ltd. vs. Deputy Director, Sub Regional Office, Employee State Insurance Corporation and Ors., Manu/MH/0390/2015** held that limitation under section 45A of the said Act will start from the date of constructive knowledge and or receipt of the copy of the order. He relies on paragraph 9 of the said judgment which reads thus:

“9. From the aforesaid, it is clear that in absence of actual or constructive knowledge of the order sought to be challenged, it cannot be said that the period of limitation would commence from the date of the order itself. It is only after getting actual or constructive knowledge of such order that the party concerned can decide whether to challenge such order or not.”

6 On the basis of these submissions and the authority in the matter of **Buldana Urban Co-operative Society Ltd. vs. Deputy Director, Sub Regional Office, Employee State Insurance Corporation and Ors., Manu/MH/0390/2015**, the learned Counsel for the petitioner submits that the impugned order/letter dated 17.10.2016 be set aside and held that the appeal filed by the petitioner under section 45AA on 19.7.2006 was within limitation.

7 On the other hand, the learned Counsel for the respondent submits that in view of the letter dated 15.10.2016 issued by Joint Director (Revenue) ESIC and the authority in the matter of **Buldana Urban Co-operative Society Ltd. vs. Deputy Director, Sub Regional**

Office, Employee State Insurance Corporation and Ors.,
Manu/MH/0390/2015 (Supra), he is submitting to the courts order.

8 It is to be noted that in the present proceedings, order passed by the Deputy Director under section 45A of the said Act was duly received by the petitioner on 2.7.2016 and thereafter, the petitioner filed appeal under section 45-AA of the said Act on 19.7.2016 i.e. within 17 days.

9 Considering the letter dated 15.10.2015 issued by Joint Director (Revenue) ESIC and the authority in the matter of **Buldana Urban Co-operative Society Ltd. vs. Deputy Director, Sub Regional Office, Employee State Insurance Corporation and Ors., Manu/MH/0390/2015** (Supra), I am of the opinion that Appeal filed by the petitioner under section 45-AA of the ESIC Act, 1948 was within limitation. Accordingly appeal shall be entertained and decided on its own merits by the authority. Considering these facts, following order is passed:

- a) Order dated 17.10.2016 passed by Director, Appellate Authority Employees' State Insurance Corporation, Mumbai is set aside.
- b) Appellate authority shall consider appeal in accordance with law on its own merits.
- c) Writ Petition stands disposed of accordingly.
- d) No order as to costs.

JUDGE