

Reserved on : 08.11.2017

Delivered on : 17.11.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAIWAMY

C.M.A.No.1560 of 2015 and
M.P.No.1 of 2015

1.The Regional Director,
ESI Corporation, 143 Sterling Road,
Nungambakkam, Chennai - 34.

2.The Authorised Officer,
ESI Corporation, 143 Sterling Road,
Nungambakkam, Chennai - 34.

3.The Recovery Officer,
ESI Corporation, 143 Sterling Road,
Nungambakkam, Chennai - 34.

... Appellants

Vs.

1.Sun Global Logistics Pvt. Ltd.,
rep by its Accountant P.Arunkannan
112/1, Second Floor,
Nafees Manzil, Braodway,
Chennai - 600 108.

2.The Branch Manager,
HDFC, Chennai - 600 001.

... Respondents

Appeal filed under Section 82 (2) of Employees' State Insurance Act, 1948 against the order of the Employees' State Insurance Court, Principal Labour Court, Chennai dated 05.04.2013 in I.A.No.237 of 2012 in E.I.O.P.No.66 of 2012 to set aside the same.

For Appellants : Mr.G.Bharadwaj

For Respondents : Mr.Syed Jaffer Admed (R1)

Mr.C.Senapathi (R2)

J U D G M E N T

The Employees' State Insurance Corporation has filed the above appeal challenging the order passed in I.A.No.237 of 2012 in E.I.O.P.No.66 of 2012 on the file of the Employees' State Insurance Court, Principal Labour Court, Chennai.

2.The 1st respondent filed a petition in I.A.No.237 of 2012 in E.I.O.P.No.66 of 2012 to direct the 3rd respondent to re-transfer the balance amount of Rs.57,089/- to the petitioner's account, after adjusting both the deposit amounts of Rs.16,739/- and Rs.644/-, totalling Rs.17,383/-.

3.It is the case of the 1st respondent that they filed E.I.O.P.No.66 of 2012. Challenging the order dated 21.05.2012 passed under Section 45-A of the Employees' State Insurance Act determining the contribution of Rs.66,955/- for the period from 04/2007 to 03/2011 and another order

dated 21.05.2012 passed under Section 45-A of the Employees' State Insurance Act determining contribution of Rs.2,574/- of the period 2009-10. The Employees' State Insurance Court, Principal Labour Court, Chennai granted an order of interim stay and directed the 1st respondent to deposit 25% of the disputed amount on or before 18.10.2012 and posted the matter on 19.10.2012. Before communicating the order to the petitioner, the appellant Corporation issued a notice to the Banker under Section 45-G of the Act on 12.09.2012 and the Banker has transferred an amount of Rs.74,472/- to them, when actually 25% of the amount, which comes to Rs.17,383/-, only was to be transferred. The appellant Corporation had attached the entire contribution amount mentioned in the two orders dated 21.05.2012. In these circumstances, the 1st respondent filed a petition to re-transfer a sum of Rs.57,089/- to their account. The appellant Corporation contended that they have not received any orders from the Labour Court and therefore, the contribution amount transferred to their account is just and legal. The Labour Court, taking into consideration the case of both parties, allowed the application and directed the Corporation to pay Rs.57,089/- from the attached amount of Rs.74,472/- to the petitioner, after adjusting the pre-deposit amount of Rs.17,383/-. Challenging this order, the Corporation has filed the above appeal.

4. Heard Mr.G.Bharadwaj, learned counsel appearing for the appellants, Mr.Syed Jaffer Admed, learned counsel appearing for the 1st respondent and Mr.C.Senapathi, learned counsel appearing for the 2nd respondent.

5.Mr.G.Bharadwaj, learned counsel appearing for the appellant Corporation submitted that since the order passed by the Principal Labour Court was not communicated to the Corporation, the transfer of a sum of Rs.74,472/- from the account of the 1st respondent is just and legal. Further, the learned counsel submitted that under Section 45 - G of the Act, the Corporation has powers to attach the bank account for recovery of dues, notwithstanding the issuance of certificate under Section 45 - C of the Act.

5.1.In support of his contentions, the learned counsel relied upon a judgment of a Division Bench of Jharkhand High Court reported in **2005-II-L.L.J. 916 [Ranchi Refractories Vs. Regional Director, Employees' State Insurance Corporation, Patna and others]**, which reads as follows:

“A recovery proceeding was initiated against the appellant for the recovery of Rs.89,601/- under the Employees' State Insurance Act, 1948. In execution of the said

order, certain attachments were made under Section 45-C of the Act. However, the authority took recourse under Section 45-G of the Act and attached the bank account. The said order of the attachment of bank account was challenged by the appellant in WWJC No.287 of 2001. The learned single Judge dismissed the Writ Petition on February 21, 2003 holding that the respondents were justified in applying Section 45-G of the Act in issuing the order of attachment of bank account.

2.Mr.Rajiv Ranjan, learned counsel appearing on behalf of the appellant assailed the judgment of the learned single Judge on the ground that one recourse has been taken under Section 45-C of the Act and movable properties have been attached the amount could have been realized only by auction sale of those attached properties and recourse to Section 45-G of the Act was not justified.

3.We are not able to accept the submission of the learned counsel. Section 45-G of the Act confers power upon the authority to take recourse to the attachment of bank account for the recovery of dues notwithstanding the issuance of certificate under Section 45-C of the said Act.”

6.Countering the submissions made by the learned counsel for the appellants, Mr.Syed Jaffer Admed, learned counsel appearing for the 1st respondent submitted that under Sections 45 - C to I of the Income Tax Act and Second Schedule Rules 2 & 3, the 1st respondent is entitled for 15 days

clear notice for invoking the provisions of Section 45 - C to recover the amount due and in the event of breach of the requirement, the appellant Corporation cannot retain the amount.

6.1. In support of his contentions, the learned counsel relied upon the following judgments:

(i)2011-IV-LLJ-246 (Mad) [G.R.Thangamaligai Jewellers Vs. Employees State Insurance Corporation and another] wherein this Court held as follows:

“...
4.

Consequent to the Section 45-A order, the respondent Corporation issued a notice of demand to the defaulter in terms of Rule (2) of Second Schedule to the Income Tax Act, 1961 read with Sections 45-C to 45-I of the ESI Act. This demand notice was issued on November 10, 2009 in respect of three orders passed under Section 45-A of the ESI Act. By the notice, G.R.Thangamaligai Private Limited was called upon to pay the amount within seven days from the date of receipt of the notice, failing which, it was specified that recovery will be made in accordance with the provisions of Sections 45-C to 45-I of the ESI Act.

5.The petitioner herein, on November 13, 2009, replied to the recovery notice by a common letter stating that the management has decided to contest the matter before the Competent Court and therefore, the amount is not

paid and prayed the Authority not to initiate any action for recovery of the amount. In such circumstances, on November 18, 2009, the respondent Corporation issued another notice under Section 45-G of the ESI Act calling upon the bank of the petitioner to pay the amount due in terms of the order passed under Section 45-A of the ESI Act. This notice issued under Section 45-G of the ESI Act was honoured by the bank.

6.The petitioner, realising that the respondent Corporation is intending to recover the amount in bank as deposit, invoking the power under Section 45-G of the Act, by the second proceedings as above, rushed to this Court and filed this Writ Petition. The petitioner sought for an order of interim injunction restraining the respondents from receiving the money. This Court, by order dated November 19, 2009, while ordering notice of motion, granted an order of interim injunction for a period of four weeks. Even before the interim order of this Court could be served on the respondents, the respondent Corporation had already recovered the money from the bank. Thereafter, the petitioner filed M.P.No.1/2010 for an order in the nature of interim direction to direct the respondents to refund the amount already recovered.

...

9.Referring the above provisions, learned senior counsel appearing on behalf of the petitioner contended that the first notice was issued on November 10, 2009 invoking the above stated provisions. However, the Authority has scored out the 15 days' time indicated in the notice to read as 7 days

from the date of receipt of the notice for recovery of the amount. This is contrary to the above referred rules. The Authority can take action for recovery only after 15 days of service of notice and not before. Therefore, there is a clear violation of the law.

...

15. In this case, the Authority had amended the notice and had directed the petitioner to pay the amount within seven days from the date of receipt of the notice instead of 15 days provided in the Rules. The respondent has proceeded to issue the second notice to recover the amount through the bank invoking the provisions of Section 45-G of the ESI Act within 8 days from the date of receipt of the first notice dated November 10, 2009. Therefore, in this case, the respondents have clearly acted in arbitrary manner to recover the amount without giving the petitioner sufficient time. In any event, even assuming that the provisions of Section 45-G of the ESI Act enables the Authority to recover the amount does not empower the Authority to recover the amount without following the procedure in terms of Rule 2 of Second Schedule to the Income Tax Act. Section 45-G does not exclude the procedure prescribed. When the statute prescribes that a thing should be done in particular manner, such act should be done in that manner and not at all."

(ii) **2006-III-L.L.J. - 33 [Employees State Insurance Corporation, Kanpur and others Vs. L.M.L. Ltd., and another]** wherein the Division

Bench of Allahabad High Court held as follows:

“...

3.We are of the opinion that the mere mention of 15 days in the notice, which was served on February 6, 2006 did not by itself cast any legal obligation on the appellant to withhold action for 15 days. The mandatory requirement for allowing 15 days to elapse arises on a joint reading of Section 45-H of the E.S.I. Act which makes, *inter alia*, the provisions of the Second Schedule of the I.T. Act, 1961 applicable, and the clauses in Part-I of the said Schedule II. Under Clause-2 of Part-I notice is to be issued by the Tax Recovery Officer specifying requirement of payment within 15 days, and Clause-3 states that “No step in execution of a certificate shall be taken until the period of 15 days has elapsed since the date of the service of the notice required by the preceding rule.”

4.The issue is whether Clause-3 was broken by taking money away from the respondent's - bank account on February 21, 2006 itself and thus effecting recovery in a substantial way on that very date. In legal matters, unless there is strong cause to the contrary, parts of a day are not counted. As such, if there is a prohibition against taking of action within a period of one day from February 6, 2006, no action can be taken on February 7, 2006. On pure arithmetic if one day is made 15 days, February 21, 2006 becomes a prohibited date. The recovery was therefore wrong. So was the attachment levied on February 21, 2006. His Lordship has moulded the relief by directing that Rs.43 lacs shall be

retained by the appellants. This is because the respondent has gone up to the E.S.I. Court under Section 75 of the Act and unless the Court otherwise waives, the appeal would not be entertainable without 50% deposit. His Lordship has ordered retention of only 50% of the principal amount and not 50% of the interest.

...

7.The period of two weeks fixed for return of the money has already elapsed; as such the return has to be made forthwith. A prayer for extension of time for return is made by Mr.Tiwari but it is unhesitatingly turned down, as it is not proper for a public authority not to return money illegally recovered from anybody, or hold on to it even for a single day.”

7.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the 1st respondent had filed E.I.O.P.No.66 of 2012 challenging the two orders passed under Section 45-A dated 21.05.2012 for the period from 04/2007 to 03/2011 and for the period 2009-10. The Employees' State Insurance Court, Principal Labour Court, Chennai, while granting an order of interim stay, by order dated 20.09.2012, directed the 1st respondent to deposit 25% of the disputed amount on or before 18.10.2012 and posted the matter on 19.10.2012. The appellant Corporation issued a notice to the Banker under Section 45 - G of the Act on 12.09.2012 and the Banker

transferred an amount of Rs.74,472/- to the account of the Corporation, whereas the Labour Court had directed the 1st respondent to deposit 25% of the disputed amount (i.e.) Rs.17,383/-. Since the Corporation had transferred a sum of Rs.74,472/-, the 1st respondent has filed an application in I.A.No.237 of 2012 seeking for re-transfer of the sum of Rs.57,089/- [(i.e.) Rs.74,472/- minus Rs.17,383/-].

8.From the judgments relied upon by the learned counsel for the 1st respondent, it is clear that the Authority concerned should give 15 days clear notice prior to the recovery of the amount under Rules 2 & 3 of the Second Schedule of the Income Tax Act. In the case on hand, the appellant Corporation has not given any notice to the 1st respondent as contemplated under Rules 2 & 3 of the Second Schedule of the Income Tax Act. The appellant Corporation has not produced any evidence to show that the said notice was given to the 1st respondent complying with the provisions of the Rules. The ratio laid down in the judgments relied upon by the learned counsel for the 1st respondent squarely applies to the facts and circumstances of the present case.

9. In these circumstances, the Labour Court has rightly held that the attachment made by the Corporation for a sum of Rs.74,472/- is illegal. Therefore, the Labour Court, after compliance of the order passed by it on 20.09.2012, by deducting 25% of the disputed amount (i.e.) Rs.17,383/-, directed the Corporation to re-transfer the balance amount of Rs.57,089/- to the 1st respondent. For the reasons stated above, I do not find any error or irregularity in the order passed by the Employees' State Insurance Court, Principal Labour Court, Chennai.

10. In these circumstances, the Civil Miscellaneous Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

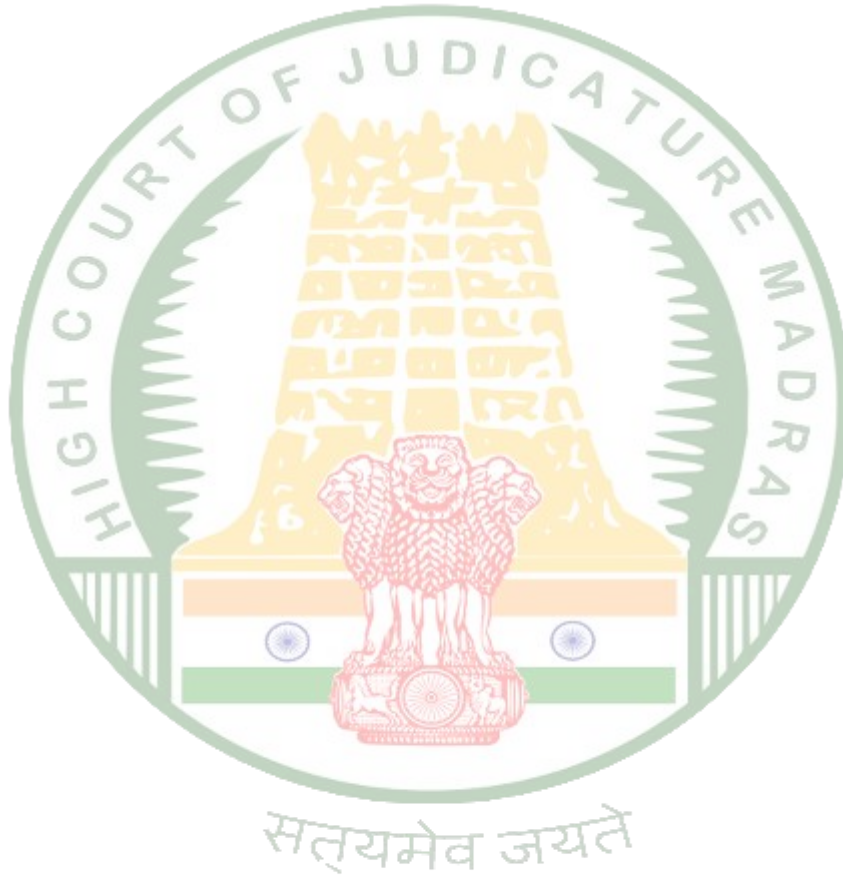
Index : Yes
Internet : Yes
Speaking order
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17.11.2017

WEB COPY

To

The Employees' State Insurance Court,
Principal Labour Court,
Chennai.



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M.DURAIWAMY, J.

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Judgment in
C.M.A.No.1560 of 2015 and
M.P.No.1 of 2015

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