



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.269 of 2016

1. The Joint Director,
ESI Corporation Sub Regional Office,
4th main Road, K.K.Nagar,
Madurai - 20.

2. The Recovery Officer,
ESI Corporation, Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai - 20.

... Appellants

Vs.

Anja Hucifer Industries,
Rep.by its Proprietor R.Madana
No.18, Venkatesapuram,
Srivilliputhur.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 82(2) of the ESI Act, 1948 to set aside the decree and judgment of the ESI Court (Labour Court) Madurai passed in ESIOP No.16 of 2004, dated 05.04.2014.

For Appellants : Mr.K.C.Ramalingam
For Respondent : Mr.P.Chandrabose

JUDGMENT

The ESI Corporation has filed this appeal challenging the order dated 05.04.2014 passed by the ESI Court, Madurai allowing ESIOP.No.16 of 2004 filed the respondent herein.

2.The respondent is an establishment covered by the provisions of ESI Act, 1948. The respondent was served with an order dated 22.03.2002 stating that there was delay in remitting the regular contribution from August 1999 to January 2002. The respondent was called upon to pay a sum of Rs.13,249/- towards interest. Contending that the said amount was finalised without giving him due opportunity, the respondent herein filed O.P.No.16 of 2004 before the Labour Court, Madurai. The Labour Court specifically gave a finding that the principle of natural justice ought to have been complied with in this case. It therefore set



aside the demand made vide Form C18 notice dated 22.03.2002 and the consequential recovery notice dated 04.07.2002 and 10.07.2002 and the matter was remitted to the file of the authority for conducting enquiry afresh. Questioning the same, this appeal has been filed.

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3.This Court admitted the appeal on the following question of law arose for consideration :

(1)When the appellants are empowered to levy interest on belated payment contribution as provided under law in Section 39(5) of the ESI Act, 1948 read with Regulations 31 and 31 A after due intimation of facts such as period of default, extent of delay etc, whether the appellant is mandated to pass orders after hearing the respondent in the absence of objections from the respondent on the receipt of impugned e-18/22.03.2002.

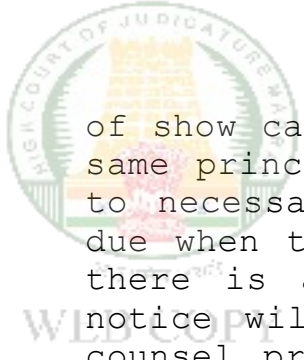
(2)Whether the Court below is right in setting aside the impugned Notices including recovery notice dated 10.07.2002 in view of law under Section 45(c) to 45(1) of the Act?

4.Heard the learned standing counsel appearing for the appellant corporation and the learned counsel appearing for the respondent establishment.

5.The learned standing counsel pointed out that if there is delay in remitting the contribution, liability to pay interest would consequentially arise. It is statutory in nature. There is no power to waive the interest. He relied on the decision reported in **AIR 2008 SC 3122 (M/s.Goetze (India) Limited v. Employees State Insurance Corporation)**. This proposition is well settled. The question is not whether the establishment can be exempted from liability to pay interest even though there was delay in remitting contribution. On the other hand, the question is whether there was any delay in remitting contribution and if so what is the period of delay.

6.The learned counsel appearing for the respondent would strongly contest the quantum of interest arrived at by the appellant corporation. When there is a dispute in the very nature of things, there will have to be an enquiry.

7.The learned counsel for the respondent would place reliance on the decision of the High Court of Calcutta reported in **2008 (2) L.L.N. 890 (Engser Ltd v. E.P.F. Organisation)**. The said case arose under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The learned Judge held that even though Section 7 Q of the Act does not provide for issuance



of show cause notice, grant of an opportunity is necessary. The same principle can be applied in this case also. This Court has to necessarily hold that the payment of interest is statutorily due when there is delay in remitting the contribution. But, if there is any dispute regarding the said factum of delay, then notice will have to be given. In fact, the learned standing counsel produced a copy of the show cause notice which contains the relevant particulars regarding delay in remitting the contribution. But, the specific stand of the respondent is that they never received a copy of the said show cause notice. It was also not marked in the E.S.I.O.P.

8. In these circumstances, I have to necessarily answer both the substantial questions of law against the appellant. The appellant cannot really be said to be prejudiced. The matter is only remitted to the file of the respondent. Fresh issuance of show cause notice contending all the relevant particulars is necessary. The respondent will thereafter have to place on record the details regarding remittance. No elaborate enquiry is contemplated. Thereafter, it is only a question of simple arithmetic. The order dated 05.04.2014 in ESIOP.No.16 of 2004 on the file of ESI Court, Madurai is confirmed. This appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The ESI Court (Labour Court) Madurai.
2. The Record Keeper,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.P.Chandrabose, Advocate Sr.No.87680
+1cc to Mr.K.C.Ramalingam, Advocate Sr.No.87405

SKM

VB/KP/SAR3/05/12/2017/3P/5C

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