BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.668 of 2015
and
M.P.(MD).No.1 of 2015

M.k.Gopalan Motor Service,
403, Main Road,
Kovilpatti-628 502,
through its Proprietor,
M.Kanagasabapathy ... Appellant

Vs.

1.Employees State Insurance Corporation,
Sub Regional Office,
Salai Street, Vannarpettai,
Tirunelveli-627 003,
Represented by its Joint Director. ... Respondents

Prayer: Appeal filed under Section 82 of Employees' State Insurance Act 1948, to set aside the order dated 15.04.2015 made ready on 18.04.2015 made in E.S.I.O.P.No.7 of 2014, before the Labour Court, Tirunelveli.

For Appellant : Mr.M.E.Ilango
For Respondent : Mr.P.Ganapathysamy

JUDGMENT

Heard the learned counsel on either side.

2.The appellant herein is an establishment covered by the provisions of the Employees' State Insurance Act, 1948.

3.The authority issued two Form C-18 notices on 18.08.1998 and 28.08.1999 for the period from 1986 to1999. After issuing such C-18 notices, the authority did not proceed to hold any enquiry or pass any order under Section 45(A) of the Act. After a gap of ten years, personal hearing was commenced only in the year 2009. The establishment appeared through its authorised representative and sought time for production of documents. Several hearings were conducted. Finally on 19.02.2010, the relevant ledgers were produced. The authority could have passed an order immediately thereafter. But for reasons best known the order under Section 45 (A) of the Act determining liability of the appellant was passed only on 24.12.2012. The said order was in respect of the period from 1986 to 1999. This was challenged by the appellant before the E.S.I Court by filing E.S.I.O.P.No.7 of 2014.

4.The principal ground raised by the appellant was that the demand now raised was squarely hit by limitation. The amendment made vide Act 18 of 2010, came into force with effect from 01.06.2010. As per the said amendment, the order under Section 45 (A) of the Act shall not be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable. Even though, the plea of limitation was pointedly raised, the Employees' State Insurance Court chose to dismiss the petition by order dated 15.04.2015. It is this that is challenged in this appeal.

5.This Court had admitted this appeal since the following substantial questions of law arose for determination:-

I.Whether the Lower Court is justified in coming to a conclusion that the impugned order passed on 24.12.2012 demanding ESI contribution for the period from 1986 to 1989 is not barred by limitation?

II.Whether in the absence of any saving clause for alleged pending proceedings after the introduction of a limitation period of five years by Act 24 of 2010, the Lower Court was right in applying Section 6-A of the General Clauses Act?

III. Whether issuance of two C-18 notices dated 18.08.1998 and 28.08.1999 for the determination of contribution payable for the period from 1986 to 1999 would save the impugned order dated 24.12.2012 after the coming into force of Act 24 of 2010.

6.The learned Standing Counsel appearing for the respondent Corporation would refer to Section 6(A) of the General Clause Act, 1897. The said provision deals with the effect of repeal of an enactment and the implications arising out of such repeal. In the present case, the said provision has no application whatsoever. The second proviso to Section 45(A) of the Act is absolutely clear and admits of no ambiguity. It is beyond dispute that the appellant establishment produced their ledgers on 19.02.2010. The Act 18 of 2010 came into force with effect from 01.06.2010. There is no explanation whatever from the respondent for not passing the final order was passed before the said date. The impugned order came to be passed only on 24.12.2012, When there is a statutory prohibition from raising a demand for a period beyond five years from the date when the contribution payable, it is not open to the respondent to ignore the same and pass an order of demand. In this case, the contribution became payable by 1999 itself. Therefore, a demand cannot be raised thirteen years later. The E.S.I. Court was clearly wrong. The substantial questions of law raised in this appeal are answered in favour of the appellant.

7.The order dated 15.04.2015 made in E.S.I.O.P.No.7 of 2014 before the Labour Court, Tirunelveli is set aside.

8.The learned counsel appearing for the appellant submits that this is a condition precedent for filing the petition under Section 75 of the Act. Deposit of certain amount was made. Since this appeal is being allowed, the appellant is permitted to withdraw of the said amount with accrued interest, if, any.

9.This Civil Miscellaneous Appeal stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Presiding Officer,
The Labour Court,
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.M.E.Ilango, Advocate, SR.No.90052

+One cc to Mr.P.Ganapathisamy, Advocate, SR.No.90141

tsg
RL/5C/3P/JC/SAR3/27/12/2017

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