



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2017

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THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. (MD) No.1359 of 2013

Employees' State Insurance Corporation,
Sub-Regional Office (Madurai),
Represented by its Director,
No.2, West Street, K.K.Nagar,
Madurai.

... Appellant/Respondent

-Vs-

M/s. The Ramalinga Mills Limited,
Represented through its Chairman,
212, Ramasamy Nagar,
Aruppukottai.

... Respondent/Petitioner

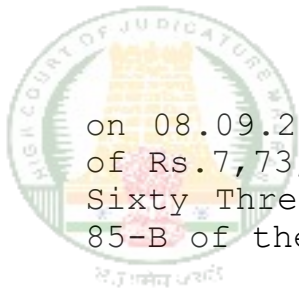
Prayer: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, to set aside the order dated 25.08.2012 passed by the ESI Court (i.e. Labour Court), Madurai, in ESI OP No.76 of 2011 and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellant.

For Appellant	:	Mr.P.Ganapathisamy
For Respondent	:	Mr.Hema Karthikeyan for M.Elenchezhian

JUDGMENT

The instant appeal has been filed by the Employees State Insurance Corporation against the order dated 25.08.2012 passed by the Labour Court (Employees State Insurance Court), Madurai, in E.S.I.O.P.No.76 of 2011.

2. The case of the appellant is that due to the delay in payment of contribution amount as per the Employees State Insurance Act, 1948, the appellant had made a demand dated 08.07.2011, against the respondent for payment of penalty under Section 85-B of the Employees' State Insurance Act, 1948. The respondent sent a reply dated 25.08.2011 to the demand dated 08.07.2011, sent by the appellant. After the reply was sent by the respondent and personal hearing given to the respondent, the appellant passed final orders



on 08.09.2011 under which the respondent was directed to pay a sum of Rs.7,73,463/- (Seven lakhs Seventy Three Thousand Four hundred and Sixty Three only) as penalty for the delayed payment under Section 85-B of the Employees' State Insurance Act, 1948.

3. Against the final order dated 08.09.2011 passed by the appellant, the respondent filed E.S.I.O.P.No.76 of 2011 before the Labour Court, (Employees' State Insurance Court), Madurai. The Labour Court in E.S.I.O.P.No.76 of 2011, passed a conditional order directing the respondent to pay 10% of the penalty amount while granting stay of the impugned demand. The respondent had also complied with the said condition by paying 10% of the penalty amount directly to the appellant. By final order dated 25.08.2012 in E.S.I.O.P.No.76 of 2011, the Labour Court, (Employees' State Insurance Court), Madurai, the Employees' State Insurance Court, modified the impugned demand of the appellant and directed the respondent to pay 20% of the impugned demand to the appellant. Out of which, the appellant / respondent had already paid 10% in compliance with the earlier conditional order and only 10% remains to be paid to comply with the final order dated 25.08.2012 passed by the Labour Court. The petitioner had also paid the balance 10% to the Appellant Corporation and complied with the directions given by the Appellant Corporation, as per its final order dated 25.08.2012 in E.S.I.O.P.No.76 of 2011. Aggrieved by the order of the Labour Court dated 25.08.2012, reducing the penalty, the instant appeal has been filed before this court by the Employees' State Insurance Corporation.

4. This court while entertaining this appeal, framed the following substantial questions of law:-

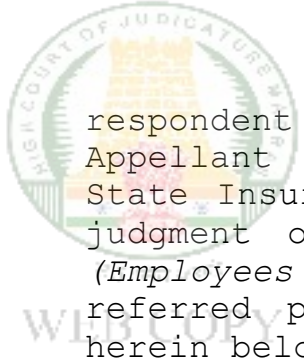
(1) Whether the Trial Court can accept the documentary evidence without any witness proving the contents thereof.

(2) Whether the Trial Court is justified in casually interfering with quasi-judicial orders of the said Corporation despite the protection available under Section 114, illustration(e) of the Evidence Act?"

5. Admittedly, the respondent has paid the entire arrears of contribution on 27.05.2011 within 21 days from the date of inspection report submitted by the appellant on 06.05.2011. Therefore, the entire arrears of contribution was paid by the respondent, even before 08.07.2011 being the date of the impugned demand.

6. According to the learned Counsel for the appellant, there was deliberate attempt on the part of the respondent to delay the payment of contribution and therefore there is mens rea and actus reus on the part of the respondent not to pay the E.S.I. Contribution.

7. Per contra, learned counsel for the respondent submitted that there is no act of *mens rea* or *actus reus*, on the part of the



respondent in making the delayed payment of the contribution to the Appellant Corporation. Therefore Section 85-B of the Employees' State Insurance Act is not attracted. He has also relied upon the judgment of Hon'ble Supreme Court reported in (2008) 3 SCC 35 (*Employees' State Insurance Corporation Vs HMT Ltd.*, and another and referred paragraph 26 of the said judgment which is reproduced herein below.

"26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/ or the quantum thereof."

8. In support of his contention that where there is no *mens rea* or *actus reus*, he has relied upon the decision of this Court reported in 2012-III-LLJ-819(Mad), *Employees' State Insurance Corporation, Madurai-20 And Hafeez Motor Transport, Pudukottai*. Further under section 85-B of the Employees' State Insurance Act, 1948, the powers of the Employees State Insurance Corporation to recover damages is only discretionary and not mandatory as seen from the said section, which is reproduced below:-

"85-B. Power to recover damages. - (1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover [from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations].

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.

[Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations].

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue [or under section 45-C to section 45-I]."

9. The Labour Court has in its findings considered all the materials available on record and has also referred to Section 85-B of the Employees' State Insurance Act which empowers the appellant Corporation to recover damages which is only discretionary. Therefore, after perusing the materials available on record, this Court is of the considered view that the substantial questions of law raised in the present appeal does not deserve any merit and there exists no substantial question of law for consideration in the



instant Appeal. Accordingly the Civil Miscellaneous Appeal is dismissed. However, there shall be no order as to costs.

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Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Judge, Labour Court,
Madurai.

Copy To:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.P.GANAPATHISAMY, ADVOCATE IN SR No. 94216
+ 1 CC TO Mr.K.HEMAKARTHIKEYAN, ADVOCATE IN SR No. 94026

PNN
TE/GT/SAR-4 : 30/01/2018 : 4P/6C

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