

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.686 of 2009

and

M.P.No.1 of 2009

Jeevan Diesels & Electricals Ltd.,
Represented by its
Deputy Manager (Administration),
Mr.Rajesh James.Appellant/ Petitioner

..Vs..

The Regional Director,
Employees' State Insurance Corporation,
143, Sterling Road, Nungambakkam,
Chennai-600 034.Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948, to set aside the order passed by the Employees State Insurance Court (II ADJ) at Puducherry in E.S.I.O.P.No.2 of 2003 dated 21.02.2008 and the orders of the respondent vide No.TN/INS-I/55-21200-32 dated 10.01.2002 passed under Section 45-A of the ESI Act together with consequential recovery proceedings initiated vide No.TN/C-19/INS/I/55-C-21200-32 dated 18.11.2002.

For Appellant :Mr.Sai Srojan Tayi
for Mr.Giridhar & Sai

For Respondent : Mrs.Jayakumari

J U D G M E N T

The Civil Miscellaneous Appeal has been filed against the order passed by the Employees State Insurance Court (II ADJ) at Puducherry in E.S.I.O.P.No.2 of 2003, dated 21.02.2008, raising various grounds.

The CMA was admitted on the following substantial question of law:-

- a. Whether the belated demand in the year 2001 for payment of ESI contribution for the check

period 1994-1997 is not time barred under proviso to Section 77(1A) (b) of the ESI Act 1948.

2. The case of the appellant is that show cause notice was issued to the appellant's company, which were engaged in the manufacture and sale of Diesel Generator Sets, and the respondent is allotted the Code No.55-21200-32 by the ESI Corporation by covering ESI Scheme. A surprised Inspection was carried out on 31.12.1997 and the Inspector pointed out some alleged irregularities for the period from April 1993 to 1997. While searching the office, it was also pointed out that certain deductions were paid by the Company and it was alleged that the contributions in respect of the remuneration paid to some of the employees like production incentives to the tune of Rs.74,575.60 is made by the said officials. The notice dated 13.10.2001 under Form C-18 as well as the order under Section 45-A of the ESI Act dated 10.01.2002 which refer that the claim for a sum of Rs.88,293/- under the heads of account viz., Labour Charges, Carriage Inwards, Carriage Outwards and Civil Works Construction are defective as they do not contain reasons or basis for the claim made under the above heads. The said notice dated 13.10.2001 was sent to the appellant herein for recovery of a sum of Rs.88,293/-. The assessment when made, an opportunity ought to have been given to the appellant to explain its stand or chance to file a statement giving full particulars of the contributions actually due. Failing to do so, the department will proceed against them and pass order under Section 45-A of the ESI Act, determining the amount of contributions due from the appellant under the provisions of the ESI Act and will be recovered under Section 45-C to 45-I of the Act, along with interest at 6% per annum up to 19.10.1989 and 12% per annum up to 31.08.1994 and thereafter, at 15% per annum under Section 39 (5) of the ESI Act 1948, payable on arrears of contributions for each day of default or delay in payment of dues. Earlier to this notice on 12.09.2001 itself the earlier letter was written by the appellant, from which it could be seen that the respondent have already sent a Letter No.TN/INS I/-55-21306/C18 (ad hoc), for which, the appellant have sent the said letter dated 12.09.2001, stating that they were in receipt of the letter and since the officer concerned has been transferred, they have requested 30 days time to produce the same, which was signed by the authorized signatory.

3. The adhoc show cause notice was sent again on 03.10.2001. The appellant on 19.12.2001 has again sought for further period of three weeks time, since the issue is relating to the years 1994-1995 onwards and all the records are at head office and the concerned person, who was dealing with this matter has been transferred from Puducherry to Head Office. The main claim against the appellant was that the deductions were

paid from April 1993 to November 1997 and it was alleged that the contributions in respect of remuneration paid to some of the employees like production incentive to the tune of Rs.74,575.60/- is made and this made the appellant to submit the reply on 28.05.1998 by stating the incentive was paid and the demand by the authority, which do not attract contribution, likewise paid for machinery maintenance, was not applicable for contribution. However, the appellant had paid a sum of Rs.6,486/- towards contribution due as demanded by the Inspector and without referring to the reply dated 28.05.1998 and the objections raised by the company, the respondent corporation sent notice under Form C-18 dated 13.10.2001 to recover the amount to the tune of Rs.88,293/- for the period of 94-97 to appear for enquiry on 05.11.2001.

4. The appellant was constrained to submit the letter dated 19.12.2001, to grant extension of three weeks time for producing the records. The respondent ESI Corporation has passed an order dated 10.01.2002, under Section 45-A of the ESI Act stating that the contribution claimed by the Corporation was not paid even after show cause notice under Form C-18, and by not appearing before the respondent for personal hearing on the given date, then it was presumed that the appellant has accepted the contribution claimed without any objection. Subsequently, the respondent filed an application before the Recovery Officer, ESI Corporation dated 18.11.2002 for recovery of the sum of Rs.1,01,758/- with interest at the rate of Rs.36.78 per day from 01.11.2002. The Recovery Officer had directed the appellant to pay the amount within 15 days otherwise recovery will be ordered. Immediately, the appellant filed a petition under Section 45-A of the ESI Act raising various grounds that the contributions for the Labour Charge, Carriage Inward, Carriage Outward and Civil work Construction are not falling within the provisions of the ESI Act. Even though, the appellant has claimed such things, the corporation has initiated proceedings under Section 45-A of the ESI Act. Hence, the appellant filed the petition to quash the same.

5. On hearing the parties, the ESI Court has upheld the order passed by the respondent and dismissed the petition filed by the appellant on merits. Against which, the appellant has filed this petition and would submit that the ESI Court is wrong in dismissing their claim stating that the order of ESI Court is perverse and the proceedings of the respondent determining the payment of contribution and initiation of recovery proceedings are arbitrary and instead of considering his reply and application seeking extension of time for tracing of old records, the respondent have immediately passed an order mechanically. The recovery of amount belongs to the period between April 1993 to 1997 and the inspection was conducted on

30.12.1997 and final orders of the assessment was made after 4 years (i.e.), on 03.10.2001, and the order under Section 45-A of the ESI Act came to be issued only on 10.01.2002. Since, the claims pertain to the contributions for the period 1994-95, 1995-96 and 1996-97 and as the claim is made after 5 years, it is clearly time-barred by limitation and cannot be enforced in view of the proviso attached to Section 77(1A)(b) of the ESI Act, 1948. The order is factually erroneous, since the appellant has replied to the show cause notice and other notices. The wages regarding outward and inward, freight charges are the items of expenses incurred by the company and the payment was made to transporter and the transporter cannot, by any stretch of imagination, be considered to be the employee of the appellant and hence, there is no liability to pay contribution for the above heads under the ESI Act.

6. The learned counsel appearing for the appellant would also contend that the charges for the purpose of technical work at the customer's site and those labourers are not under the control of the appellant and the labourers also do not discharge their work in the premises of the appellant's company. Those labourers are either under the control of an independent contractor or occasional or one-time employees engaged by the respective buyers. There is no employer-employee relationship between the appellant and the labourers as per law and so, the respondent cannot claim contribution in respect of the labour charges. The claim regarding civil work construction in the year 1996-1997 as stated in the show cause notice for a sum of Rs.9,442.35/- cannot be accepted, as it was factually incorrect. The appellant have voluntarily remitted contribution for the heads of the account earlier left out by them, after the same was pointed out in the inspection report. The contribution for four heads (i.e.), labour charges, carriage Inward, Carriage Outward and Civil Works construction was not paid, as no contribution is payable thereon under the ESI Act. The Regional Director, while passing the ex-parte order impugned has not taken into account the findings of the inspector or discussed as to how the amounts were taken as wages as per the provisions and how the appellant become an employer in respect of the amount under the above four heads. The order has been passed mechanically without taking into relevant facts. The appellant has not willfully failed or refused to submit or maintain the records as per Section 44 of the ESI Act nor he has prevented the Inspector or any other officials of the respondent corporation, while exercising their functions under Section 45. The appellant's request for extension of time for production of records were ignored and the order passed under Section 45-A by the respondent is without jurisdiction, violation of principles of natural justice. The order of the respondent initiating recovery proceedings is not justified and the corporation, if

finds there is a dispute regarding the quantum payable, has to seek a resolution of that dispute before the Employees Insurance Court under the ESI Act and not otherwise. The powers conferred under the ESI Act can be exercised by the respondent corporation only when the provisions of the said Act are applicable. The initiation of the proceedings and the claim made by the corporation is on the basis of omitted wages alleged by the corporation and is without any basis. The order by the respondent Director is without jurisdiction.

7. The learned counsel for the respondent ESI corporation Mrs. Jayakumari submitted that the records of the appellant were verified by the Statutory Inspector of the respondent corporation on 19.12.1997 and 30.12.1997. At the time of inspection, the Inspector has verified the general ledger and other books of accounts for the period 1994-95, 1995-96 and 1996-97 and found that the appellant has concealed certain wages from the purview of payment of contributions due on that. A spot notice was issued on 03.12.1997. In spite of that, the appellant did not reply. Since, the appellant did not comply as per the instructions of the Inspector, the respondent has issued a show cause notice in form C-18 dated 03.10.2001 affording an opportunity of personal hearing to the appellant on 05.11.2001 to explain its stand or to file a statement giving full particulars of the contributions actually due as per its records for the above said period. The respondent would further contend that the appellant had failed either to file an account of statement nor appear before the authorities. Hence, the respondent was constrained to invoke Section 45-A of the ESI Act and consequently, the order was passed on 10.01.2002. Since, the appellant had not paid the amount by contributing as per the Section 45-A order, the respondent had invoked the provisions of Sections 45-C to I of the ESI Act and filed an application for the recovery of contributions as per the earlier order. She would further contend that items stated above supra would squarely come under the heads of definition of wages as per Section 2(22) of the ESI Act. At the time of inspection also, the appellant was not able to produce any records as well as the details regarding the disputed accounts.

8. The appellant had submitted that the said workers are not direct employees and they were engaged by the respective buyers or by the appellant indirectly and they all do not fall within the definition of workmen and hence, the appellant is not liable to pay any amount.

9. Heard, learned counsel for the appellant and learned counsel for the respondent and perused the available records.

10. It could be seen from the records that the Department

has, on earlier date, sent a notice to the appellant to produce the records before the authorities and the appellant has sent a letter to the respondent Department seeking time for tracing out the records and production of old records. A show cause notice was issued by the ESI Corporation to the appellant to appear on 05.11.2001, for which the appellant seems to have sent a letter on 19.12.2001 seeking further time for producing the same and to file necessary documents. Only on 03.10.2001, the Corporation sent notice of assessment under Section 45(A) of the ESI Act and recovery notice under Section 45(C) was also issued. From the above, it is clear that an opportunity was given to the appellant for producing the records before the authorities and the appellant company have been taking time on 12.09.2001 seeking for 30 days and again on 19.02.2001, seeking for three more weeks time by sending only a brief letter to the authorities. The said letters were marked before the ESI Court as exhibits and it is an admitted fact that the appellant have been asked to produce the records in advance and in spite of producing the same, they have been taking time to produce the same on lame excuses. The appellant had submitted that the said officer in-charge has been transferred to the Head Office from Pondicherry and in the second letter also they have reiterated the same reason and sought for further time of three weeks. But there was no proof filed to show that the said letters were actually received by the authorities concerned. There was no acknowledgment card produced before this Court. When there was no material produced by the appellant to prove that they have had subsequently appeared before the authorities and produced the records to substantiate their claim, the respondent issued a show cause notice in Form C-18 dated 03.10.2001 giving an opportunity to the appellant of personal hearing to be held on 05.11.2001 to explain his stand or to produce the documents or to file a statement regarding the particulars of contribution for the said period. But the appellant had not availed the said opportunity and had remained silent not to appear before the authorised officer, hence, the respondent has to proceed further.

11. The appellants have contended that they are not liable to pay contribution in the above heads, which were demanded by the respondent. It is also an admitted fact that the respondent, namely, the Statutory Inspector has verified the records on 19.12.1997 and 30.12.1997 and the appellant was found to have been conceded certain wages from the purview of payment of contribution, hence a prior inspection spot letter dated 01.12.1997 and the spot notice dated 31.12.1997 were issued by the respondent and pointed out that the appellant Company has made short deductions and thereby, made short payment of contributions in respect of insured person and they have not made contribution in respect of remuneration paid to the

employees for the period April 1993 to November 1997. They also directed the company to pay the demanded contribution.

12. The appellant had sent a reply on 28.05.1998 denying contribution under various heads. The appellant's contention in the said the reply dated 28.05.1998 is that the production incentive bonus given to the employees during the year 1995 to 1997 do not attract contribution and likewise, the charge paid for machinery maintenance, was not applicable for contribution, since the work has been carried out outside the company premises and not at the factory and so, not liable to pay ESI Contribution. However, the appellant paid a sum of Rs.6,486/- towards contribution as demanded by the Inspector and the challan copy for the contribution was also enclosed along with the said reply. The appellant's further contention is that without taking into consideration of objection raised by the appellant, the respondent Corporation again sent Form C-18 notice dated 13.10.2001 claiming the amount of Rs.88,293/- under various heads.

13. The appellant's contention that the relevant records are at the Head Office, Bangalore and the person, who is dealing with the ESI, was transferred from Pondicherry to Head Office, cannot be sustained. Only after giving the appellant the opportunities, the respondent has passed an order on 10.01.2002 as per Section 45(A) and the appellant has filed an application before the ESI Court and it has been presumed that an opportunity was given to the appellant from the date of spot inspection and issuance of letter, wherein discrepancies have been pointed out and later, show cause notices were issued and the appellants have not utilised the same and inspite of appearing before the parties and producing the relevant records for defending their claim, they have sent a letter on frivolous contention.

14. It could be further seen from the materials that the alleged work carried out by the appellant factory, as per the ESI Act, falls within the parameters of the said Act and contributions are to be levied by the respondent. Hence, the proceedings were initiated as per the Act.

15. It is seen from the records that the appellant had grossly failed to explain or produce records regarding the dispute of certain accounts and the labour charges paid to the employees of independent employer or contractor are clearly held to be wages under the Act and the appellant is liable to pay the contribution. Even the employees are not direct employees of the petitioner, it is an admitted fact that the labourers are employed through independent contractors and they are also coverable under the Act and contribution are to be paid for them.

16. The plea of the appellant that the materials which procured from out side will be brought into factory by other persons, they will unload it and this appellant had not directly engaged them and will not pay any wages and the alleged buyers, whoever takes the finished products, fixed price for a particular product or the producers fixed the price only covering the labour charges also. When various activities carried out by the appellant's company was admitted and for which, the amount was contributed and it could be seen that in the accounts, various heads in the assessment notice, Labour Charges, Carried Inward, Carried Outward and Civil Works Constructions were clearly given under the heads for contribution payable and basis for contribution, has based on the accounts produced available in the said office.

17. It is held by various Courts that the labour charges paid to the employees of an immediate employer or contractor are clear wages under the Act, for which contribution is due and payable. The labour element on the freight charges, loading and un-loading are also come under the purview of definition of wages. The labour charges paid in the civil construction work are also falling under the definition of wages. The plea of the appellant that there is no employer-employee relationship between the appellant and these parties, who had provided the above such services to the appellant, cannot be accepted and maintained. This expenditure relates to various works undertaken by the appellant in connection with or related to or incidental to manufacturing activity of the appellant. There need not to be any direct access between the employees and the appellant herein. As per Sections 2(9), 2(13), 2(17), and 2(22) r/w Section 38, 39 and 40 of the Act, the appellant is liable to pay the contributions for the said heads, which are connected with the manufacturing activity of the employer. When the appellant himself has admitted that the labourers are employed through independent contractor or occasionally as one time employee, the claim of the appellant that they can be engaged by the respective buyers of the appellant, is also not tenable.

18. The appellant has pointed out various judgments, which have been held in favour of his defence. All these judgments are distinguishable from the facts of the present case.

19. Employees' State Insurance Corporation/respondent sent a notice, dated 10.02.2009, under Section 85(B) of the ESI Act 1948, which is extracted hereunder:-

"Whereas M/s.Jeevan Diesels & Electricals (P) Ltd., a factory/establishment to whom the provisions of the EST Act are applicable and who are required to pay the contributions (Employer's share and Employee's share) in

accordance with Section 40 of the EST Act have failed to pay the contribution / made a default in the payment of the contributions within the stipulated time and manner prescribed under Regulation 31 and 26 of the ESI (General) Regulations, 1950 framed under the Act, as per the details furnished in the statement given hereunder/enclosed.

And whereas it is proposed to determine and recover from M/s.Jeevan Diesels & Electricals (P) Ltd., the said damages as per the provisions of the Regulation 31-c of EXI (General) Regulation 1950 read with Section 85 (B) (i) of the ESI Act.

And whereas it is proposed to afford M/s.Jeevan Diesels & Electricals (P) Ltd., an opportunity to show cause against such determination and recovery.

Now Shri.K.S.Jain, Puducherry, being the principal Employer of the above factory / establishment may please show cause within 15 days as to why damages to the extent of percentage as indicated in Col.No.7 of the statement in the reverse/enclosed subject to the maximum of the amount indicated in Col.3 of the said statement may not be imposed and recovered.

If no reply is received within the period as referred to above, it will be presumed that no reply is intended and the action to recover the damages will be taken on merits.

In case Shri. K.S.Jain, desires to represent his case in person, he may appear before the undersigned on 26.02.2009 at 11.30 AM with necessary documents to explain his case. If he fails to attend the personal hearing on the above date and time, it will be construed that he does not want a personal hearing and the case will be decided in merits after taking into consideration the written representation submitted by him, if any.

Calculation Sheet

.....
Total Damages proposed for the period from 94-95 to 96-97 Rs.88,293."

20. To the above said notice dated 10.02.2009, authorized signatory of the petitioner company sent a reply dated 19.02.2009, which reads as follows:-

"We are in receipt of your notice dated

10.02.2009 addressed to us and copy marked to Mr.K.S.Jain, Principal employer seeking payment of damages. We both object to the present demand seeking to levy damages for the following reasons without prejudice to one another.

1. The present determination for payment of higher contribution has been challenged by us before the Hon'ble High Court in CMA SR.No.87482/2008 wherein notice in CMP.1/08 for condonation of delay in filing CMA has been ordered by the Court on 21.01.2009. In the said case, We have already filed a petition for stay of all further proceedings pursuant to determination, and the same is subjudice.

2. Sec.85B can be invoked only in cases involving wilful failure of payment of contribution. In our case, our company has never defaulted in payment of contribution. The dispute is only regards quantum payable during a particular period, inasmuch as the Corporation has claimed higher contribution by reckoning certain additional heads of expenses, which has been contested by us on certain legal grounds. As such, there is no wilful failure to pay contribution and there is a bonafide dispute.

3. In any event, the present claim for damages is belated.

4. Further, no demand for damages having been made at the time of determination for payment of contribution in the year 2001, the present demand cannot be made at this point of time. The Corporation is thus estopped from making a demand for payment of damages, at this point of time.

5. No reasons for levy of damages has been furnished in the show cause notice and hence, your SCN is not tenable.

For the foregoing reasons, it is requested that the present proceedings may be dropped particularly as the matter is subjudice before the Hon'ble High Court of Chennai."

21. All the documents produced by the appellant before this Court are considered by this Court, eventhough the same were not submitted before the ESI Corporation/Court.

22. When the appellant is engaging in manufacturing and selling of diesel engine sets, which are duly covered by the ESI Scheme, the appellant is liable to pay the said contribution for the employees, who were working under them, for doing duties relating to carriage inward and outward and civil work and the labour charges for other works for the period from 1994-1997. In spite of giving an opportunity to the appellant to produce materials before the respondent, the same was not utilised by the appellant and now they cannot claim that no opportunity was given to them to defend their case. As per Section 45(A), the appellant is liable to pay the amount, since the appellant's case will be held against them if they have not defend their case by producing materials and the same will be taken that they have no defence and Section 45 determines the contribution of certain cases and the appellant has to pay the same and consequently, recovery order under Section 45(C) of the Act is also legal, valid and enforceable.

23. The appellant's contention that the authorised officer/Deputy Director has no authority to pass the order cannot be accepted, since the power has been exercised by the Corporation under Section 45(A) and the said officer has duly authorised to invoke the provisions of law and discharge his duties.

24. The appellant's contention that the claim of the respondent from the year 1993-94 is barred by limitation under Section 77(1) (A) (b) is not acceptable, since no such provision is available in the ESI Act to recover. Even for the five years, as per the contention of the respondent counsel, there has been demand raised in the spot inspection notice and that is in the year 1997, which is well within the said period. Hence, the order passed under Section 45(A) dated 10.01.2002 and the consequential recovery order issued under Section 45(C) on 18.11.2002 are legally valid. The show cause notice was issued for the period 1994-95, 1995-96 and 1996-97 and the order has been passed in the year 2001 and the show cause notices were issued and an amendment in the Section which was given effect of the ESI Scheme only from the year 2016 and as such, this proviso has come into force prospectively and not retrospectively and the amount claimed by the respondent Corporation is not barred by limitation. Since no time limit is prescribed in the ESI Act at the point of issuing demand notice, the said plea has been rejected.

25. The labour element on the freight charges, loading or unloading are also come under the purview of definition of wages and as such Sections 2(9), 2(13), 2(17) and 2(22) r/w Section 38, 39 and 40 of the said Act would show light that the appellant is liable to pay the contribution for the labour

charges, wages paid on any work related to or in respect to or connected with the manufacturing activity of the employer. Nothing prevented the appellant to appear before the authorities and explain their cases. In spite of appearing in person, the appellant took the matter very lightly and they have sent a four line letter DATED 19.12.2001, as follows:-

"With reference to your above letter, we hereby request you to please grant us the time for further period of three weeks. Since these issues relate to 94-95 onwards and all our records are at our head office and the concerned person, who was dealing with these matter, have been transferred from here.

Therefore, We request you to please grant us time for the period of three weeks."

But there was no acknowledgment card for the said letter. It is also stated by the respondent Department that earlier letter was also not received by them.

26. Sections 45(A), 45(B) and 45(C) of the Employees' State Insurance Act, 1948 reads as follows:-

45-A. Determination of contributions in certain cases. -

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any [Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.]

[Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.]

[Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from

the date on which the contribution shall become payable.]

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45-B [or the recovery under section 45-C to section 45-I].

45-B. Recovery of contributions. –

Any contribution payable under this Act may be recovered as an arrear of land revenue.]

45-C. Issue of certificate to the Recovery Officer. –

(1) Where any amount is in arrear under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below:

(a) attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal or immediate employer ;

(b) arrest of the employer and his detention in prison ;

(c) appointing a receiver for the management of the movable or immovable properties of the factory or establishment, or, as the case may be, the employer :

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1)

notwithstanding that proceedings for recovery of the arrears by any other mode have been taken. "

Hence, there is no illegality in passing the orders.

27. Admittedly, when proper opportunity was given to the petitioner, which was not utilised by them, there is no violation of principles of natural justice and the order passed by the respondents is valid as per the statute.

28. Hence, this Court is of the view that the orders of the respondent vide No.TN/INS-I/55-21200-32 dated 10.01.2002 passed under Section 45-A of the ESI Act together with consequential recovery proceedings initiated vide No.TN/C-19/INS/I/55-C-21200-32 dated 18.11.2002 are in order. There is no interference needed at this juncture. Accordingly, the order passed by the Employees State Insurance Court (II ADJ) at Puducherry in E.S.I.O.P.No.2 of 2003 dated 21.02.2008 is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.
vji/nsd/mra

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer,
Employees State Insurance Court (II ADJ)
Puducherry.
2. The Regional Director,
Employees' State Insurance Corporation,
143, Sterling Road, Nungambakkam,
Chennai-600 034.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.Giridhar & Sai, Advocates,vide SR.No.89192/18
+1cc to Mrs.S.Jayakumari, Advocate, SR.No.89550/18

C.M.A.No.686 of 2009

Kak(16/07/2019)