

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.2529 of 2015

M/s.Erode District Co-operative Spinning Mills Ltd.,
Kolathupalayam
Dharapuram - 638 661
Erode District
Represented through its
Administrator (In charge) ... Appellant/Petitioner

Vs

The Joint Director
Employees State Insurance Corporation
Sub Regional Office
333, Cross Cut Road
Coimbatore - 641 012. ... Respondent/Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 82 of ESI Act, 1948 against the order dated 21.07.2015 made in E.S.I.O.P.No.12 of 2011 on the file of the Employees State Insurance Court (Labour Court), Salem.

For Appellant : Mr.M.Elanchezhian
For Respondent : Mr.S.P.Srinivasan

JUDGMENT

The short question involved in this case is whether the appellant, Erode District Co-operative Spinning Mills, is liable to pay damages under Section 85-B of the Employees State Insurance Act, 1948, for non-remittance of ESI contributions in time.

2.1. The admitted facts are : The appellant is a Co-operative Society and has carried on business under the name Erode District Co-operative Spinning Mills Ltd., It is an institution to which the provisions of ESI Act will apply and there is no dispute on that. However, for the period from October, 1997 to June, 2003, there has been irregular remittance

of ESI contributions, consequent to which, action was initiated which resulted in the respondent imposing a damage of Rs.39,10,747/- on the appellant under Section 85-B of the said Act.

2.2. This was challenged by the appellant before the Labour Court, Salem in ESIOP.No.12 of 2011. Before the Labour Court, the appellant/petitioner had contended that the Society has become sick and defunct, and cited the same as the reason for its failure to remit the contributions in time. This contention was only partially accepted by the Labour Court in that, while it entered a finding based on Exts.A15 to Ext.A21, that the appellant Co-operative Society has become sick, yet proceeded to confirm the order imposing damages on the solitary ground, that the Co-operative Society has not been declared sick by the Board for Industrial and Financial Reconstruction (BIFR) 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 the regulations.

3. Before this Court, the learned counsel for the appellant would contend that in Employees State Insurance Corporation Vs. H.M.T. Ltd., & Anr. [AIR 2008 SC 1322] the Hon'ble Supreme court has held that imposing damages under Section 85-B of the ESI Act is not a compelling consequence that default in remittance of contribution should invite, and that it must be preceded by a finding, if there has been a deliberate design not to remit the contributions as required under the statute. Existence of mens rea to contravene statutory requirement to remit the contribution amount is a pre-condition for imposing damages. Secondly, the learned counsel contended that in the case of RH 153, Ramanathapuram District Cooperative Spinning Mills Ltd., and others Vs. Central Board of Trustees of Employees' Provident Fund Organization [(2014) 2 CWC 728], the Division Bench of this Court has taken a view that, in situations where Co-operative Society could not transfer the Provident Fund deducted from the salaries of its employees to the Board of Trustees/EPF Department, because the Co-operative Society had run into rough weather commercially and had become sick cannot be discriminated as against those industries that are declared sick by BIFR in the matter of waiver of damages. This judgment is confirmed in Special Leave Petition in SLA(C) No.35089/2016.

4. The learned counsel for the respondent reiterated on the same line of arguments on which the Labour Court has rested his reasoning.

5.1. On a careful appreciation of rival submissions, this Court finds substantial merits in the submissions of the learned counsel for the appellant. What applies to the Employees' Provident Fund and Miscellaneous Provisions Act situation should apply in equal force to cases where remittance of

contributions is not made, or irregularly made, not deliberately, but owing to commercial sickness of the Co-operative Societies. Both the authorities cited by the learned counsel for the appellant applies equally to cases arising under Section 85-B of the ESI Act as well. This Court holds that the ratio on which those judgments rest their conclusions is worthy of sustaining a conclusion on similar factual situations though arise under the ESI Act. Here it is necessary to emphasis that it is not even the case of the respondent that the appellant has not become sick and this finding of fact has not been disputed.

5.2. For the reasons already indicated, it may not be appropriate to insist that exemption from imposition of damages would be granted only if a business institution is declared commercially sick by BIFR under the Sick Industrial Companies Act. Taking into account the facts and circumstances of this case, this court deems it appropriate to impose a damage of 25% of the amount imposed as damages by the respondent at the first instance.

6. In conclusion, this Civil Miscellaneous Appeal is partially allowed and the order of the Employees State Insurance Court (Labour Court), Salem, dated 21.07.2015 made in E.S.I.O.P.No.12 of 2011 is modified and the damage imposed by the respondent is reduced to 25% of the said amount. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To :

1.The Presiding Officer,
Employees State Insurance Court,
Labour Court,Salem.

2.The Joint Director
Employees State Insurance Corporation
Sub Regional Office,333, Cross Cut Road
Coimbatore - 641 012.

+1cc to Mr.M.Elanchezhian,Advocate,S.R.No.41707.

+1cc to Mr.S.P.Srinivasan,Advocate,S.R.No.41656

CMA.No.2529 of 2015

EV(CO)
BM 02/08/2018