IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20.10.2017
JUDGMENT PRONOUNCED ON : 28.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2725 of 2003
and CMP.Nos.16532 & 16533 of 2003

Joint Regional Director
Employees State Insurance Corporation Limited
33, Cross Cut Road, Coimbatore. ... Appellant/ Respondent

Vs.

Sri Ramalinga Sowdambigai Mills Ltd.,
112, P.S.Sundaram Road,
Tiruppur. ...Respondent/ Petitioner

Prayer:- Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the decree and judgment of Presiding Officer, the Employees State Insurance Court, Coimbatore (Labour Court, Coimbatore) passes in EIOP.No.110/2001 dated 03.04.2003.

For Appellant : Mr.K.C.Ramalingam

For Respondent : Mr.Rajnish Pathiyil

JUDGMENT

This appeal is preferred by the Joint Regional Director, ESI Corporation Ltd., Coimbatore, challenging an order dated 03.4.2003 passed in ESIOP.No.110/2001 by the Labour Court, Coimbatore Vide its order.

2.1 The brief facts that are necessary for deciding the lis at hand are: The appellant has issued a notice dated 26.6.1995 to the Recovery Officer, ESIC, SRO, Coimbatore with a copy marked to the respondent herein directing him to recover an amount of Rs.13,18,576/- on delayed remittance of contribution payable for the period from January, 1975 to January 1987. Challenging the same, the respondent moved the District Court, Coimbatore, in ESIOP No.39 of 1996, which was later transferred to Labour Court and taken on its file as EIOP.No.110/2001.

2.2 In its petition, the Respondent/Employer has essentially contended about the difficulties that its institution ran into, which inter alia included shortage of raw materials and labour unrest, besides change of management which combinedly led to a situation where it could not remit the contribution in time. It also pleaded that the claim of the appellant is barred by limitation.

3. Countering the same, the appellant in its counter has denied it and pleaded that limitation would not be applicable to the situations which the employer encountered.

4. Before the Labour Court, neither side adduced any evidence and the only document marked on both sides is the impugned notice of the appellant. The Court below has extensively gone into the question and held that limitation would apply and accordingly rejected the claim of interest by the appellant. This is under challenge before this Court in this appeal.

5.1 The learned counsel for the appellant contended that the scheme of Employees' State Insurance Act, 1948, makes a distinction between appellants' power or duty to claim damages under Section 85-B of the Act and the one involving claim of interest on delayed remittance of contribution under Regulation 31 of 1950. The Court below has laboured much in telescoping the criterion under Section 85-B of the said Act into Regulation 31 of 1950, and equated the law applicable to the former with the one applicable to the latter. Elaborating further, the counsel argued that in Section 85-B of the Act, the power to recover damages from the defaulter-employer is discretionary where there is a space statutorily provided to consider any explanation that is offered to defend an action for damages. However, under Regulation 31, the obligation to pay interest on the delayed remittance is automatic, and the duty cast on the authorities to claim it is absolute.

5.2 Continuing his arguments further, the learned counsel contended that the Court below was in error in applying the provision of limitation provided under Section 77(1-A)(b) of the ESI Act, as its application is alien to the situation at hand as has been brought out in Employees State Insurance Corporation Vs C.C.Santhakumar [(2007) 1 SCC 584] where the Supreme Court has categorically held that Section 77(1-A)(b) of the ESI Act has no application to a demand made under Section 45-A of the Act and also held that the same is applicable only for the claims made by the Corporation before ESI Court.

6. Countering the said argument, the learned counsel for the respondent/employer would contend in Santhakumar case, the Supreme Court has only considered the inter- relation between Section 45-A and Section 77(1-A)(b) of the ESI Act, and has not considered its effect on Regulation 31. Section 45-A in essence deals with determination of contribution payable by the employer at the first instance and it does not deal with payment of interest per se. The duty to pay interest is dealt separately under Section 31 and it is in this context, the proviso to Section 77(1)(A)(b) of the ESI Act, becomes relevant which has provided that no claim shall be made by the Corporation after five years from the period to which the claim relates. The learned counsel also relied on the same authority that the counsel for the appellant relied on, for bringing out the distinction that he admitted.

7. It has now become the responsibility of this Court to declare whether Sec.77(1)(A)(b) of the Act is all pervasive and impacts instances where interest is claimed under Regulation 31. Here both sides relied on a solitary authority of the Hon'ble Supreme Court in Santhakumar case referred to above. While the appellant contended that the law declared by the Hon'ble Supreme Court provides a solution to arithmetic precision, the respondent utilised the same for drawing a distinction.

8. The major premise is that Regulation 31 mandates that an employer who is under an obligation to pay contribution for an employee shall remit the same with 21 days from the last day of the calendar month in which the contribution fell due. Plainly, 21 days time is granted in the next succeeding month for remittance of contribution. One of the consequences that would visit the employer for his failure to remit the contribution within the time stated is spelt out in Regulation 31-A. It provides that an Employer ''shall be liable to pay simple interest at the rate of twelve percent .. in respect of each day of default or delay in payment of contribution''. Another consequence that may visit the employer is spelt out in Sec.85-B. This provides for imposition of penalty in the form of damages for failure 'to pay the amount due in respect of any the contribution'. There are two Provisos that qualifies this. In the context second is significant which has granted discretion to ESI Corporation reduce or waive the damages recoverable. In order this discretion is exercised objectively, the Corporation8 is mandated to issue notice to the employer and to enquire if the business establishment is a Sick Industrial Company. Given the nature of questions required to be resolved, further discussion on this may not be necessary.

9. This brings into zone of discussion to Sec.77. It reads:

> 77.Commencement of proceedings:- (1) The proceedings before an Employees' Insurance Court shall be commenced by application.
>
> [(1-A) Every such application shall be made within a period of three years from the date on which the cause of action arose.
>
> (a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on ground which appear to it to be reasonable;
>
> (b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time.
>
> Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates;

It deals with two aspects: (a) The time within which Corporation can make a claim; and (b) Once claimed, the time within which Corporation may move the Court. The present case falls within situation (a). Proviso to Sec.77(1)(A)(b) is emphatic: "..no claim shall be made by the Corporation after five years of the period to which the claim relates. The head of claims to which the expression 'claim' in the aforesaid Proviso relates to can be known from the main provision: Claim by the Corporation for recovering contribution including interest and damages. Statute is unequivocal, plain and straight forward. Here, the appellant's counsel attempts to draw power from Santhakumar case [(2007)1 SCC 584] for the sustenance of his contention.

10. The question before the Hon'ble Supreme Court was whether the five years limitation prescribed will be applicable to instances covered under Sec. 45-A and 45-B of the Act. Sec.45-A carries a title. It reads: 'Determination of contribution in certain cases.' It then proceeds to declare what those cases are. They, as per the provision are: Where no returns, particulars, registers or records are submitted, furnished or maintained in accordance with Sec.44 of the Act. To state it differently it covers situation where the employer

ignores his fundamental obligation cast on him under the statute. Sec.45-B deals with mode of recovery of contribution. It says that it may be recoverable as arrears of land revenue. There were conflict of views on this, and in paragraph 27 the Supreme Court declares:

> 27. If the period of limitation, prescribed under proviso (b) of S.77(1A) is read into the provisions of S.45A, it would defeat the very purpose of enacting Ss.45A and 45B. The prescription of limitation under S.77(1A) (b) of the Act has not been made applicable to the adjudication proceedings under S.45A by the legislature, since such a restriction would restrict the right of the Corporation to determine the claims under S.45A and the right of recovery under S.45B and further, it would give a benefit to an unscrupulous employer. The period of five years, fixed under Regulation 32(2) of the Regulations, is with regard to maintenance of registers of workmen and the same cannot take away the right of the Corporation to adjudicate, determine and fix the liability of the employer under S.45A of the Act, in respect of the claim other than those found in the register of workmen, maintained and filed in terms of the Regulations.

11. It is not seen anywhere that the Supreme Court has had an occasion to consider whether the Corporations' claim of interest or/and damages are insulated from the limitation period prescribed in the Proviso to Sec.77(1)(A)(b). On the contrary, the statute itself is categorical. It insists that any claim of interest and damages by the Corporation must be within five years. Since the expression 'interest' is used without any limitation or qualification, it necessarily includes interest payable under Regulation 31.

12. In conclusion, this Court holds that the limitation for making a claim under the Proviso to Sec.77(1)(A)(b) will not leave aside a claim of interest on delayed remittance of contribution from the plane of its applicability. Necessarily the appeal fails, and the order of the Employees State Insurance Court, Coimbatore (Labour Court, Coimbatore) in EIOP. No.110/2001 dated 03.04.2003 is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The Presiding Officer
Employees State Insurance Court,
(Labour Court, Coimbatore)
Coimbatore.

2. The Section Officer,
V.R.Section,
High Court,
Madras.(2 copies)

+1cc to Mr.K.C.Ramalingam Advocate Sr.No.32331
+1cc to Mr.Rajnish Pathiyil, Advocate SR.no.32173

MR(CO)
sm:22.6.2018

C.M.A.No.2725 of 2003