IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.1811 of 1996 (O&M)
Date of Decision : 23.03.2018

Employees State Insurance Corporation

..... Appellant

Versus

New Sutlej Transport Co. Pvt. Ltd. & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

***

Present :- Mr. H.S.Bhatia, Advocate
for the appellant.

None for the respondents.

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AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment and order dated 20.02.1996 allowing an application under Section 75 read with Section 77 of the Employees State Insurance Act, 1948 (for short the 'Act') filed by respondent No.1.

That as per the appellant the respondent No.1 was a private limited company who employed drivers and conductors and was obligated to deposit contribution for insurance. Those drivers and conductors were paid Rs.3/- per hundred kilometers which amount as per the respondent No.1 was a travelling allowance.

The case of the appellant on the other hand was that it would constitute part of wages and notice was issued to respondent No.1 to show the record. The respondent No.1 did not appear to show the record and consequently an order was passed under Section 45-A computing the

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contribution for the period from March 1975 to November, 1986 and that computation was challenged by respondent No.1 and the Employees State Insurance Court set it aside which is how the Corporation is before me in appeal. The first argument of the learned counsel for the appellants is that the Employees State Insurance Court wrongly held the demand to be barred by limitation by invoking the provision of Section 77 (1) (b) of the Act which as per learned counsel is a complete mis-reading of law in view of the judgment of the Supreme Court passed in ***Employees State Insurance Corporation Vs. C.C.Santhakumar, 2007 (1) SCC 584*** **.**

> *"13. Where an order is passed under Section 45A, it is the duty of the employer and not the Corporation to approach the E.S.I. Court. Since no application need be filed by the Corporation after an order is passed under Section 45A, the limitation prescribed under Section 77 does not get attracted. The non-payment of contribution is a continuing cause, which is clear from the fact that the employer is enjoined to pay the interest under Section 39(5)(A), which was introduced by Act 29 of 1989, until the date of its actual payment."*

On a perusal of the judgment, I find that this is indeed so. In that case the Supreme Court held that Section 77 of the Act applied only to proceedings before the Court and the only limitation under Section 45-A could be 'reasonable time'. As regards 'reasonable time' it is the contention of the learned counsel for the appellants that despite notices having been issued once the respondents did not appear the action of the appellants could not be taken to be beyond reasonable time.

In my opinion, it would not be necessary to go into this question because the appeal has to fail on another ground viz. whether the amount of Rs.3/- per hundred kilometers which was paid by the respondents

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to its drivers and conductors could be included within the expression 'wages as defined in Section 2 (xxii)'. A perusal of the Section reveals that there is a specific exclusion of travelling allowance.

In the circumstances, unless the appellants are able to show that the amount was not travelling allowance the same could not be taken to be within the expression of the word wages. In the opinion of the Court, respondent No.1 was able to prove that the amount of Rs.3/- per hundred kilometers was paid in order to meet the travelling expenses.

Counsel for the appellants has not been able to show how this finding is incorrect.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No

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