IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 1904 of 1996
Date of decision: 20.04.2018

Employees State Insurance Corporation ...Appellant

Vs.

Jalandhar Ex-Servicemen and Another ...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

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

Mr. Rajiv Vij, Advocate
for the respondents.

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AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment passed by Employees' Insurance Court, Jalandhar allowing an application filed under Section 75 of the Employees State Insurance Act, 1948 ("for short the Act") by the respondents.

The admitted facts are that the respondents had various units/branches. The appellant claimed that the respondent was liable to pay the contribution and other dues under the ESI Act, for various units/branches while the case of the respondent was that it was not liable. The assessment having been made the respondent challenged the same before the ESI Court who, as mentioned above, allowed that application.

Learned counsel has argued that the impugned order suffers from two basic infirmities. As per him, the Court wrongly held that the employees in each unit had to be more than 20, whereas the total number of employees of the respondent has to be seen, notwithstanding the fact that they were posted at different places. In this connection he has relied upon ***Employees State Insurance Corporation vs. New Azad Transport Co-operative Society Ltd. and Another 2009(4)SCT 8(P&H)*** and **Gopi Chand and Others Vs. Employees State Insurance Corp. (2011)IILLJ426Del** wherein it was held that an entity which has offices in more than one place cannot claim that it would be covered by the ESI Act only if the employees at that each place exceed 20. The Courts have held that total number of employees would be taken into consideration. Counsel for the respondent is not in a position to cite any contrary judgment. On principle also it is hard to resist this argument. The total number of entities have to be seen and cannot be divided into geographical units. The second reason relied on by the Commission on the issue of limitation under Section 77 (1) is also erroneous as per the learned counsel. He has relied upon **E.S.I.C. vs. C.C. Santhakumar 2007(112) FLR636** wherein the Supreme Court has held that the period of limitation prescribed under Section 77(1) is only for the purpose of an application under Section 75(1) and this period is not prescribed for an assessment under the Act. Counsel has not been able to show any judgment contrary to this also.

In view of the matter, the appeal is allowed, the impugned order is set aside and the assessment order is upheld.

Since the main case has been decided, pending civil miscellaneous, if any, shall be disposed of.

(AJAY TEWARI)
JUDGE

April 20, 2018

Poonam (II)

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*