

214 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA No. 1162 of 2016 (O&M)
DECIDED ON: OCTOBER 15, 2018**

M/S PYOGINAM 666 GURGAON

.....APPELLANT

VERSUS

**THE EMPLOYEES STATE INSURANCE CORPORATION, GURGAON
& ANR.**

.....RESPONDENTS

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Pawan Kumar Mutneja, Advocate,
 for the appellant.

 Mr. Vikas Suri, Sr. Standing Counsel,
 for respondents No.1 and 2.

 Mr. R.S. Narang, Advocate,
 for respondent No.3.

AVNEESH JHINGAN, J

 The present *intra-court* appeal has been filed against the order of
learned Single Judge dated 28.05.2016 passed in CWP No. 1252 of 2014.

2. The writ petition was filed challenging the order dated 18.11.2013

passed by Deputy Director, Employees State Insurance Corporation (for brevity 'ESI-Corp.'), Sub Regional Office, Gurgaon and order dated 31.12.2013 passed by the Appellate Authority-cum-Sub Regional Director, Employees State Insurance Corporation, Gurgaon.

3. The appellant-firm was engaged in fabrication and export of garments and accessories. The premises of the appellant were inspected by the vigilance team of ESI-Corp, Gurgaon on 24.09.2008, 12.01.2011 and 26.06.2012. In pursuant to inspection, a show cause notice was issued to the appellant. The appellant was provided an opportunity of personal hearing and was, further, asked to furnish full particulars/statement of the actual contributions payable by the appellant-firm. The vigilance team noted down the names, designations, wages etc. of the workers found in the factory and obtained their signatures.

4. The appellant-firm filed a reply to the show cause notice. The representative of the appellant-firm appeared in the proceedings but the relevant and necessary documents were not made available. Further, three opportunities of hearing were provided but the necessary material was not produced. On 12.11.2013, an adjournment was sought on the ground that representative appearing earlier had fallen ill. A detailed order dated 18.11.2013 was passed determining ESI contribution totaling ₹43,26,095/- for the period from November 2008 to March, 2011.

5. Aggrieved of the order dated 18.11.2013, appellant preferred an appeal. The appeal was rejected vide order dated 31.12.2013, as the appellant failed to comply with the condition of pre-deposit of 25% of the contribution

assessed as per Section 45AA of Employee's State Insurance Act, 1948 (for short 'the Act').

6. Thereafter, appellant filed Civil Writ Petition contending that the order dated 18.11.2013 was passed without providing a reasonable opportunity and is liable to be set aside on this ground alone. Further, grievance was raised that appellant authority failed to relax the pre-condition of deposit of 25% of contribution assessed for entertainment of an appeal.

7. The learned Single Judge, considering Section 45-AA of the Act held that appellate authority has no power to waive off the condition of pre-deposit of 25% of contribution assessed. It was further held that no case is made out for exercising jurisdiction under Article 226 of the Constitution of India, as the plea raised by the appellant that order dated 18.11.2013 was passed without affording a proper opportunity is contrary to the facts and not tenable. It was considered that even the record available with the appellant regarding service conditions of the employees wages register, attendance register, contribution of ESI, Provident Fund etc., was not produced in order to prolong the proceedings.

8. Learned counsel for the appellant contended that the order was passed in violation of principles of natural justice i.e. without providing reasonable opportunity, hence, existence of alternate remedy is not a bar and writ jurisdiction should have been invoked to set aside the order dated 18.11.2013.

9. The contention raised in the present appeal has already been dealt with by learned Single Judge, in detail holding that reasonable opportunities

were provided to appellant but in order to prolong the proceedings the material asked for was not produced. There is no error in the order of the learned Single Judge dated 28.05.2016, accordingly, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

OCTOBER 15, 2018
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<i>Whether speaking/reasoned:</i>	<i>Yes / No</i>
<i>Whether reportable :</i>	<i>Yes / No</i>