

DSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9205 OF 2021

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Paras Mahavir Co-op. Credit Society Ltd.

...Petitioner

V/s.

The Assistant Director & Anr.

...Respondents

Mr. Aumkar Joshi for Petitioner.

Ms Seema K. Chopda for Respondents.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 22, 2021

PC :

1] After hearing Mr. Aumkar V. Joshi, learned counsel for the petitioner and Ms. Seema K. Chopda, learned counsel for the respondents, in my opinion, this petition can be conveniently disposed of at the admission stage.

2] It appears from the record that an order came to be passed under Section 45A of the Employees State Insurance Act, 1948 (for short "ESI Act") by the Assistant Director on 20.7.2018 whereby the petitioner was called upon to deposit a contribution of Rs.9,34,363/- payable under the provisions of ESI Act. Such contribution was payable for the financial year, i.e. June 2013 to July 2017. The petitioner being aggrieved by the said order had approached the authority under Section 45AA of the ESI Act. The

appellate authority being the Joint Director, disposed of the appeal in terms of the following order dated 31.1.2019:-

“In view of the above findings, the appeal filed by the Appellant is dismissed both on technical grounds and on merits and I uphold the assessment made by the Authorized Officer for the period June 2013 to July 2017. The deposit of Rs.2,43,590.00 made by the Appellant on 26.09.2018 be appropriated against the contribution assessed under the provisions of Section 45A of the ESI Act, 1948 by the Authorized Officer.”

3] It needs to be observed that in filing such appeal under Section 45AA of the ESI Act, the petitioner had made an inadvertent mistake referring to the figure Rs.25,53,064/- as the contribution confirmed by the Authorized Officer. However, it was apparent mistake considering the order dated 20.7.2018 as passed by the Assistant Director under Section 45A of the ESI Act that such amount ought to have been Rs. 9,34,363/- .

4] The petitioner being aggrieved by both the orders dated 20.7.2018 passed under Section 45A of the ESI Act and the subsequent order dated 31.1.2019 passed under Section 45AA of the ESI Act, filed an appeal before the Employees Insurance Court as permissible under the provisions of Section 75 of the ESI Act. In such appeal, the petitioner also moved an application for waiver under sub-section (2B) of Section 75 of the ESI Act. However, the miscellaneous application which was filed by the petitioner has created litigation at the interim stage of the appeal, inasmuch as, in deciding the waiver application, the Insurance Court had proceeded on the

amount of Rs.25,53,064/-, which was mistakenly referred by the petitioner in the appeal under Section 45AA of the ESI Act to be the basis on which a pre-deposit would be required to be made by the petitioner for the purpose of appeal in question. The petitioner had categorically pointed out in the miscellaneous application that referring to the said amount was a mistake on its part. However, the Insurance Court did not verify the documents and proceeded on such assumption and passed the impugned order directing deposit on the basis of such amount of Rs.25,53,064/-. The petitioner thereafter approached the Insurance Court to review such order. Such application has been rejected on the ground that there are no powers under review in case of Section 75(2B) of the ESI Act.

5] In the aforesaid circumstances, in my opinion, it appears to be a clear mistake on the part of the petitioner to refer to an amount which was never determined or demanded. The learned counsel for the respondent is not in a position to point out as to on what basis or any other consideration is available on record in regard to amount of Rs.25,53,064/-. The Insurance Court ought to have verified the documents. It appears that the Insurance Court has also not considered the order passed by the Joint Director under Section 45A of the ESI Act where the amount being figure Rs.9,34,363/-.

6] In the aforesaid circumstances, the petition is disposed of with a direction to the petitioner to pre-deposit 25% on the basis of Rs.9,34,363/-. The balance deposit of 25% on the said basis of the amount of Rs.9,34,363/- has already been made by the petitioner, before the appellate authority under Section 45AA of the ESI Act. In this view of the matter, waiver application of the petitioner stands disposed of. The Insurance Court is directed to hear the petitioner's appeal and pass appropriate orders on the same in accordance with law.

7] All contentions of the parties in the pending appeal are kept open.

8] Let the balance 25% be deposited within a period of four weeks from today. It is however clarified that the observations as made in this order pertain to the period June 2013 to July 2017 and not for any other period. If there are any other demands, the authority is free to proceed to recover such amounts in accordance with law.

9] Petition is disposed of in the aforesaid terms. No costs.

(G. S. KULKARNI, J.)