IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1652 of 2013
and
M.P.No.1 of 2013

"Sun Data Computers"
Rep.by its Proprietor P.Prabhakara Reddy,
62, Jermiah Road, Vepery,
Chennai - 600 007. ..Appellant

Vs.

1.The Employees State Insurance Corporation
Rep.by the Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

2.The Recovery Officer,
ESI Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034. ..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948, against the order and decree dated 29.10.2012 of the Employees Insurance Court (Principal Labour Court), Chennai in E.I.O.P.No.294 of 2004 filed against the order under Section 45-A of the ESI Act bearing No.TN/INS/IV/51-76037 dated 11.08.2004 fro Rs.1,11,540/- for the period from October 2001 to September 2003, claiming ESI contribution due of Rs.1,11,540/0 issued by the respondent Corporation.

For Appellant : Mr.M.S.Soundara Rajan

For Respondent : Ms.S.Jayakumari,
Standing counsel for ESI

J U D G M E N T

The order dated 29.10.2012 passed in E.I.O.P.No.294 of 2004, is under challenge in the present Civil Miscellaneous Appeal.

2.The substantial question of law raised is that whether the ESI Court has failed to consider the heads of accounts viz., bonus amount and salary paid beyond the limit of coverage which does not attract ESI Contribution is legally tenable. The said question of law is relatable to the facts and circumstances of the case. The said factors of the case are considered by both the Authorities of the ESI Corporation as well as the ESI Court.

3.The Authorities passed an order under Section 45-A of the ESI Act on 11.08.2004. The said order reveals that opportunity was provided to the employer and the representative of the employer appeared for hearing on 28.04.2004, 11.05.2004 and 02.06.2004. Thus, all the records produced are considered by the Competent Authorities while conducting the enquiry under Section 45-A of the ESI Act. The findings of the Authorities in the order reveals that no wage registers were maintained and computer list giving the names of the employees with their salary alone were produced. The balance sheet and profit & loss accounts for the year 2001-02, 2002-03 were also furnished. However, other details and the registers maintained were not produced. Under those circumstances, the Authorities Competent determined the contributions payable from October 2001 to September 2003 and accordingly, a sum of Rs.1,11,540/- was directed to be paid.

4.The appellant filed an appeal under Section 75 of the ESI Act before the ESI Court. The ESI Court adjudicated the issues with reference to the documents and evidences produced by the respective parties and based on the findings of the order of the Competent Authorities under Section 45-A of the ESI Act, the ESI Court made a finding that the appellant establishment is covered under ESI Act. It is admitted by the appellant that for the period 10/2001 to 9/2003, he is liable to pay contribution as per the ESI Act. However, it was contended by the appellant that the persons worked are regular employees as well as trainees and for that training, they were not paid any salary and the wage paid to the regular employees and the contribution of Rs.1,11,540/- payable by the appellant for the above period is incorrect, though the appellant is liable to pay Rs.18,500/- towards contribution on the wage amount of Rs.2,84,520/-.

5.The ESI Court, during the pendency of the proceedings on the request of the appellant, ordered the respondent Corporation Inspector to peruse the records and make assessment and determine the contribution payable by the appellant in the Court itself. Accordingly, he produced the general ledger for the period 2001-02 to 2003-04, audited profit and loss account, attendance register for the period from 10/2001 to 9/2003 except for the month of March 2002 and the said records were produced by the Inspector of ESI Corporation on 10.05.2010 and after verifying the same, he had arrived the total difference in wages of Rs.6,25,135/- for the period 10/2001 to 9/2003 and for such wage amount, he worked out the contribution at the rate of 6.5% as Rs.40,634/-. The report was marked as Ex.C1 by consent. It has been seen in the said report in the next page, the same Inspector arrived indirect wages and for that, he determined contribution of Rs.16,509/-. However, the said contribution amount of Rs.16,509/- covers the period upto March 2004. In respect of the case on hand, the period covers upto September 2003 and beyond that period and upto March 2004, the amount of contribution calculated in the very same report as Rs.16,509/- is not payable by the appellant at that stage. Accordingly, as per Ex.C1 report, the appellant would be liable to pay Rs.40,634/- towards contribution for the period from 10/2001 to 9/2003. Considering the inspection done, pursuant to the orders of the ESI Court, the impugned order passed by the respondent under Section 45-A of the ESI Act dated 11.04.2004 was set aside and the petition thus was allowed in part and after adjusting the pre-conditional deposit of Rs.28,800/-, the ESI Court held that the appellant is liable to pay Rs.11,834/- to the respondent Corporation. Further, an opportunity was granted to the respondent Corporation to withdraw the amount of Rs.28,800 lying in the Court deposit.

6.This Court is of the opinion that all the doubts raised by the appellant were re-examined by the ESI Court through the Inspector of ESI Corporation and pursuant to the inspection conducted with reference to the documents before the ESI Court, the Inspector submitted his report. This being the exercise done by the ESI Court in order to cull out the truth and decide the matter and accordingly, set side the order passed under Section 45-A of the ESI Act. This Court does not find any perversity or infirmity in the order passed by the ESI Court and the ESI Court has well considered the order of the Authorities Competent and all the factors was taken into consideration and with reference to the doubts raised, another inspection was considered at the instance of the ESI Court and hence, this Court is not inclined to interfere with the order. Accordingly, the impugned order dated 29.10.2012 passed in E.I.O.P. No.294 of 2004 stands confirmed and the Civil Miscellaneous Appeal is dismissed. Consequently connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Employees Insurance Court
   (Principal Labour Court), Chennai.

2.The Employees State Insurance Corporation
   Rep.by the Regional Director,
   No.143, Sterling Road,
   Nungambakkam,
   Chennai - 600 034.

3.The Recovery Officer,
   ESI Corporation,
   No.143, Sterling Road,
   Nungambakkam,
   Chennai - 600 034.

+1cc to M/s.S.Jayakumari, Advocate SR.No.17202

C.M.A.No.1652 of 2013
and
M.P.No.1 of 2013

NRL(CO)
GMY(01/07/2021)