

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 2803 of 2012

Textan Chemicals (P) Ltd.,
No.75, 4th Avenue,
Ashok Nagar,
Chennai - 600 083.

Rep. By its Financial Controller

..Appellant

Vs

Employees State Insurance Corporation,
143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

Rep. By (1) The Dy. Director,
and (2) Recovery Officer.

..Respondent

Petition filed under 82 of E.S.I. Act, 1948 to set aside the order and decree dated 12.04.2011 ordered in E.I.O.P.No. 76 of 2005 on the file of learned Judge E.I.Court (Principal Labour Court, Chennai), quash/set aside the same as illegal and consequently allow the petition in E.I.O.P.No. 76 of 2005.

For Appellant : Mrs.Sharon Elizabeth V.S.
For Mr.A.Irudayam

For Respondent : Mr.C.V.Ramachandramurthy

JUDGMENT

The judgment and decree dated 12.04.2011 passed in E.I.O.P.No. 76 of 2005 is under challenge in the present civil miscellaneous appeal.

2. The question of law as raised in the appeal is mostly relatable to the factual aspects. However, the learned counsel appearing on behalf of the appellant contended that the order under Section 45A of the ESI Act was passed beyond the period of five years which is directly in violation of the proviso Clause

2 of Section 45 of the Act. It is contended by the learned counsel that the order prima facie is null and void as it was issued beyond the period of limitation contemplated under the proviso clause. This apart, the learned counsel appearing for the appellant made a submission that no opportunity as required under the provisions was not granted to the appellant and, therefore, she was deprived.

3. Learned counsel appearing on behalf of the respondent/Corporation pointed out that the second proviso to Section 45A of the Act was inserted by the ESI (amendment Act 2010) 18.1.2010 with effect from 1.06.2010. Thus, the limitation was prescribed and came into force only with effect from 01.06.2010. However, with reference to the present appeal, the order under Section 45A was issued by the competent authority on 05.11.2004, six years prior to the amendment. Therefore, the appellant is not entitled to avail the benefit of proviso clause introduced in the year 2010.

4. As far as the merits are concerned, an enquiry was conducted and the competent authority even under the order passed under Section 45A of the Act has categorically stated that the person was called for hearing and failed to attend the same. It is further submitted that the documents available with the employer were also not produced before the competent authorities. When the employer has not submitted the proof of records to substantiate his claim and the expenditure incurred as per his calculation did not go with the policy and in the absence of proof, the competent authorities passed an order under Section 45A and determined the contribution to be paid as Rs.1,02,032/-. The findings of the ESI Court is also unambiguous with reference to the reasons stated in the order passed by the competent authority under Section 45A of the Act. The ESI Court considered the documents as well as the evidence produced elaborately and made a finding that there is no lapse or irregularity with reference to the determination of the contribution to be paid by the appellant. In respect of the facts and circumstances, this Court is not inclined to adjudicate the issues as it was discussed in detail by the ESI Court.

5. As far as the substantial question of law is concerned, learned counsel appearing for the appellant raised the point of limitation and the said ground is not available in view of the fact that the order impugned passed under Section 45A was passed by the competent authority six years prior to the amendment in the year 2010 and, therefore, the question of law is accordingly answered with reference to the facts. This Court need not go further as there is no substantial question of law which deserves any further adjudication and, therefore, the judgment

and decree dated 12.04.2011 passed in E.I.O.P.No. 76 of 2005 stands confirmed and the appeal stands dismissed. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

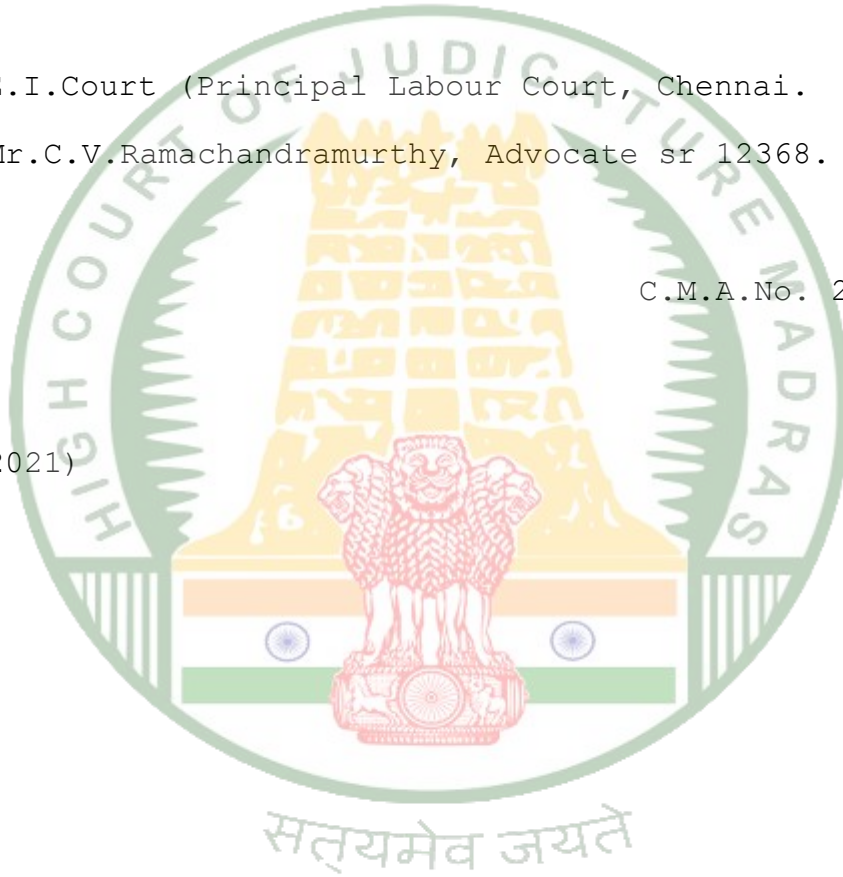
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To

The E.I.Court (Principal Labour Court, Chennai.

+1 CC to Mr.C.V.Ramachandramurthy, Advocate sr 12368.

C.M.A.No. 2803 of 2012

GP (CO)
SP (18/03/2021)



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