

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2977 of 2012

and

M.P.No.1 of 2012

M/s.T.A.V.Products Private Ltd.,
No.617/2B, T.H.Road,
Tondiarpet, Chennai - 600 081.

..Appellant

Vs.

The Deputy Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600 034.

..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, praying to set aside the order of the Principal Labour Court dated 11.09.2012 in I.A.No.179 of 2012.

For Appellant : Mr.Anand Gopalan
for T.S.Gopalan and Co.

For Respondent : M/s.S.Jayakumari

J U D G M E N T

The order dated 11.09.2012 passed in I.A.No.179 of 2012 in unnumbered E.I.O.P is under challenge in the present Civil Miscellaneous Appeal.

2. The sole contention raised by the appellant is that in respect of the same period two different orders were passed under Section 45-A of the E.S.I. Act, for which the Competent Authority has no jurisdiction. In other words, the period of assessment is one and the same and two different orders were passed under Section 45-A of the Act. Thus, the second order is unsustainable and the E.S.I. Court has merely directed the appellant to deposit 25% under the Provisions of the Act, on the ground that a consistency is to be maintained. Consistency is to be maintained, if the period of assessment is different. However in the present case, the period of assessment is one and the same and therefore, the findings of the E.S.I. Court is that the consistency is to be maintained as no relevance

with reference to the Provisions of the Act and there is no other reason to reject the Interlocutory Application filed by the appellant.

3. The learned counsel for the appellant solicited the attention of this Court with reference to Section 45-A of the E.S.I. Act, which empowers authorities competent for assessment and to determine the contribution to be paid in the Act. Once an order of assessment is passed then the aggrieved person is at liberty to prefer an appeal.

4. In the present case, the appellant preferred an appeal and for the purpose of pre-deposit the Interlocutory Application is filed seeking waiver. In the said Interlocutory Application, the Labour Court made an observation that waiver cannot be granted in full and directed the appellant to deposit 25% of the Contribution. Undoubtedly, the Labour Court itself has extended some concession in the appeal.

5. Not satisfied with the waiver, the learned counsel for the appellant stated that when there is a statutory prohibition for not issuing Section 45-A Order in respect of the same period, the appellant must be provided with a complete waiver.

6. The learned counsel for the appellant cited the judgment of this Court in the case of Quality Engineering Works and Regional Office (Tamil Nadu), Employees' State Insurance Corporation in W.P.No.18688 of 1993 dated 11.04.2001 and paragraph No.8 of the Judgment is extracted hereunder:

"8.From the counter, it is very clear that the petitioner had disclosed all the necessary materials before the Assistant Regional Director of the E.S.I. Corporation. It is admitted that the complete materials and facts were before him. But, it is contended that for reasons best known, the concerned authority had not properly verified those statements, but went ahead on the basis of a casual verification of the general ledger and therefore, the show-cause notice was issued with reference to the omitted portion. On the face of this admission that the petitioner had disclosed all the materials including the one given to the Income Tax Department by the contractors in reference to the wages, etc., if there is omission on the part of the Assistant Regional Director, the petitioner cannot be blamed for that. There is no provision under the E.S.I. Act to reopen an order of assessment made under such circumstances. A Division Bench of this Court, in Eastern Stores v. Regional Provident Fund Commissioner, 1973 (2) L.L.N 378, dealing with the Employees' Provident Funds and fundamental that if a statutory authority wants to re-examine a concluded affair or subject-

matter, it assumed the role of a reviewer in law and unless and until the statute under which he functions, authorises him expressly or by necessary implication to review such matters under certain stated circumstances or situations, he cannot assume such power in him suo motu and set at naught the earlier concluded affairs. Justice Sri Ramprasada Rao (as he then was), held as follows:

"It is fundamental that powers of appeal and review are creatures of statute and unless there is an express provision or any other provision from which such a power by necessary implication can be inferred, the authority cannot assume such a power and undertake to re-examine a closed situation....."

In *Sambandam Spinning Mills (Private), Ltd. v. Regional Provident Fund Commissioner*, a Division Bench of this Court in an unreported decision in (W.P.No.9059 of 1982, dated September 21, 1989), has held that there is absolutely no difficulty in holding that the order passed by the respondent under Section 7-A of the Provident Funds Act was final and there was no ground for reopening the same. There is no provision either in the Act or in the rules enabling the authority to reopen the proceeding suo motu."

Relying on the said judgment, it is contended that the order under challenge in the appeal is also similar and therefore, complete waiver is to be granted.

7. The learned counsel appearing on behalf of the respondent objected the said contention by stating that the order impugned is in accordance with the law as the waiver has already been granted by the E.S.I. Court for 50% of deposit and therefore, the Appellant cannot contest the matter for deposit of 25%.

8. What is to be clarified by this Court is that, whether the ground raised importantly with reference to the period of same assessment year and passing two different orders under Section 45-A of the Act is proper or not?

9. Undoubtedly, there cannot be any two orders in respect of the same assessment period. It is needless to state that even in common parlance, such orders cannot be passed by any Authority under the statute, unless there is a specific provision for passing such an order.

10. However, in the present case, the order which was under challenge in E.I.O.P. dated 20.03.2012 indicates that the period of assessment is one and the same. However, records pertaining to some other issues were included in the second

order passed under Section 45-A of the Act. The order unambiguously reveals that the order under Section 45-A did not include the details pertaining to "Appalam Coolie". Therefore, a separate order has been passed under Section 45-A for Appalam Coolie. Thus such an order cannot be construed as if it relates to the order passed at the first instance, when the subject matter of the two orders pertaining to the same assessment period is different and distinct. Then it cannot be said that the two orders are one and the same or pertaining to the same assessment year.

11. This being the factum to be considered in the present case, the E.S.I. Court failed to consider these factual disputes and passed an order in a routine manner by stating that 25% is to be deposited so as to maintain consistency. Even consistency in deposit as stated by E.S.I. Court is erroneous, when the statute prescribes 50% of the deposit. In all circumstances, the appellant must be directed to deposit 50% unless the reasons for waiver is based on certain sound facts and on legal principles. Routine grant of waiver of deposit is impermissible, when the statute contemplates 50% of deposit. It is needless to state that if 50% deposits are made, the waiver of portion can be granted only on certain acceptable reasons and such reasons must be based on sound legal principles and on distinct factors. The E.S.I. Court cannot grant waiver of deposit in a routine manner, which would amount to violation of the provisions of the E.S.I. Act. Thus, the very reason stated in the impugned order is directly in violation of the mandatory provision contemplated under the Act.

12. Thus, the E.S.I. Courts across the state is expected to follow the statutes strictly with reference to the pre-deposit amount for the purpose of entertaining an appeal under Section 75 of the E.S.I. Act. In other words, statute is to be followed and exemptions or exceptions are to be considered on exceptional circumstances only, when the reasons are based on sound legal principles or on distinct and different factors.

13. This being the factum, this Court finds that the reasoning given by the E.S.I. Court is insufficient as far as the issues raised by the appellant before the E.S.I. Court. However, the appellant is bound to adjudicate all these issues on merits and in accordance with law before the E.S.I. Court and the appellant is at liberty to adjudicate all such issues and the factual disputes are to be adjudicated independently by the E.S.I. Court with reference to the documents and evidences produced by the respective parties and uninfluenced by the facts of the case stated in this order.

14. In this view of the matter, the order passed in I.A.No.179 of 2012 dated 11.09.2012 in an unnumbered E.I.O.P. dated 10.09.2012 stands confirmed without accepting the reasons furnished for passing such an order. The appellant is

directed to deposit the 25% of the determined amount within a period of eight weeks from the date of receipt of a copy of this order.

15. Accordingly, the appeal in C.M.A.No.2977 of 2012 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed. E.S.I. Court is expected to dispose of the main appeal as expeditiously as possible, since the matter is pending for long time.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Deputy Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600 034.

2. Principal Labour Court, Chennai.

+1cc to Mr.T.S.Gopalan, Advocate SR.12909
+1cc to Mr.S.Jayakumari, Advocate SR.12665

AK II(CO)
CB(23/03/2021)

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