

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1684 of 2018
and
CMP No.13182 of 2018

ESI Corporation,
Rep. by its Joint Director,
143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

...Appellant

vs.

Tamilnadu Medicinal Plant
Farms and
Herbal Medicine Corporation Ltd. (TAMPCOL),
Anna Hospital Campus,
Arumbakkam,
Chennai - 600 106.

...Respondent

Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act against the fair order and judgment passed in EIOP No.175 of 2006 dated 17.06.2015 on the file of the Employees Insurance Court (Principal Labour Court), Chennai.

For Appellant : Mr.SP. Srinivasan
For Respondent : Mr.M.Loganathan

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the ESI Corporation challenging the impugned order dated 17.06.2015 passed by the Employees Insurance Court (Principal Labour Court), Chennai in E.I.O.P. No.175 of 2006.

2. The following substantial questions of law has been raised by the Appellant-Corporation in their grounds of appeal.

a) Whether the Hon'ble EI Court is justified in setting aside the Impugned Order passed under Section 85B of the ESI Act dated 25.10.2006 on the premise that on the passing of Section 45A order during March 2004, the respondent has paid ESI contribution and hence no delay in payment, when the Respondents have admittedly made delayed payment of ESI Contribution for the period 10/1985 to 12/1997, which had attained finality?

b) Whether the Hon'ble EI Court is correct in setting aside the Impugned Order passed under Section 85B of the ESI Act dated 25.10.2006, when a speaking order justifying the delay in payment has been recorded by the Appellants?

c) Whether the Hon'ble EI Court is justified in placing the burden on the Appellant with regard to burden of proof of belated payment and no financial loss on the part Respondent, when the ESI Act contemplates monthly payment of ESI contribution if the establishment is covered and also person approaching the Court has to prove his case being the settled proposition of law?

3. An order dated 25.10.2006 came to be passed against the respondent by the Appellant-Corporation under section 85B of the ESI Act calling upon them to pay damages for the delayed payment of ESI contributions for the period from 1985 to 1997. The respondent challenged the said order before the Employees Insurance Court (Principal Labour Court) in E.I.O.P. No.175 of 2006.

4. By the impugned order dated 17.06.2015, the petition filed by the respondent in E.I.O.P. No.175 of 2006 came to be allowed in favour of the respondent and the order dated 25.10.2006 passed by the ESI Corporation under section 85B of the ESI Act was set aside.

5. Aggrieved by the same, this appeal has been filed by the ESI Corporation by raising the aforesaid substantial questions of law.

6. The ESI Court under the impugned order has allowed the petition filed by the respondent in E.I.O.P. No.175 of 2006 on 17.06.2015 by giving the following reasons :

a) immediately after the demand was made by the Appellant-Corporation under Section 45A of the ESI Act during the month of March 2004, the respondent has paid the contribution without any delay for the period from 10/ 85 to 12/97.

b) there was no malafide intention or deliberate delay by the respondent in paying the ESI contribution for the period from 10/85 to 12/97 to the ESI Corporation, by G.O. Ms. No.85, dated 03.03.2014, the respondent was granted exemption from ESI coverage by the Government of Tamil Nadu. The respondent was also suffering from financial losses during the period from 1985 to 1997, which has not been refuted by the Appellant-Corporation.

c) there was no deliberate delay in the payment of ESI contributions by the respondent to the Appellant-Corporation as they have complied with the demand immediately on receipt of the said demand from the Appellant-Corporation.

7. The delay for the payment of ESI contribution has been properly explained by the respondent before the ESI Court. The financial losses suffered by the respondent during the period from 1985-97 has also been admitted by the Appellant-Corporation as seen from the impugned order. The demand for the payment of ESI contribution for the period from 10/85 to 12/97 was received by the respondent only in the year 2004 and immediately they have also made the payments towards ESI contributions. Thereafter, the respondent has also been exempted from ESI coverage as per GO MS 85, dated 3.3.2014 issued by the Government of Tamil Nadu.

8. Admittedly, the respondent is a Government of Tamil Nadu undertaking. As seen from the above, it is clear that there is no *mens rea* on the part of the respondent to deliberately not to pay the ESI contributions to the Appellant-Corporation and only due to the reasons stated above, they did not pay the ESI contributions on time.

9. The issue is now well settled by the decision of the Hon'ble

Supreme Court in the case of ***Employees' State Insurance Corporation versus HMT Ltd. and another*** reported in (2008) 3 SCC 35. The relevant paragraphs of the said judgment is extracted hereunder :

26. *Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and /or the quantum thereof.*

27. *The Division Bench of the High Court, therefore, in our opinion, was not wrong in opining that Section 85-B provides for an enabling provision. What, however, cannot be appreciated is that such a construction itself would lead to the conclusion that the High Court is entitled to substitute its view in place of the statutory authority. In our considered view, therefore, the matter should be considered afresh for determination of quantum of damages, etc. in the light of the observations made hereinbefore.*

10. As seen from the aforesaid judgment there must be the existence of *mens rea* or *actus reus*, to contravene a statutory provision under the Employees' State Insurance Act 1948, which in the instant case is not there as seen from the materials and evidence available on record. As the issue is well settled, the substantial questions of law raised by the Appellant-Corporation does not deserve any merit and accordingly, the

Civil Miscellaneous Appeal is dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



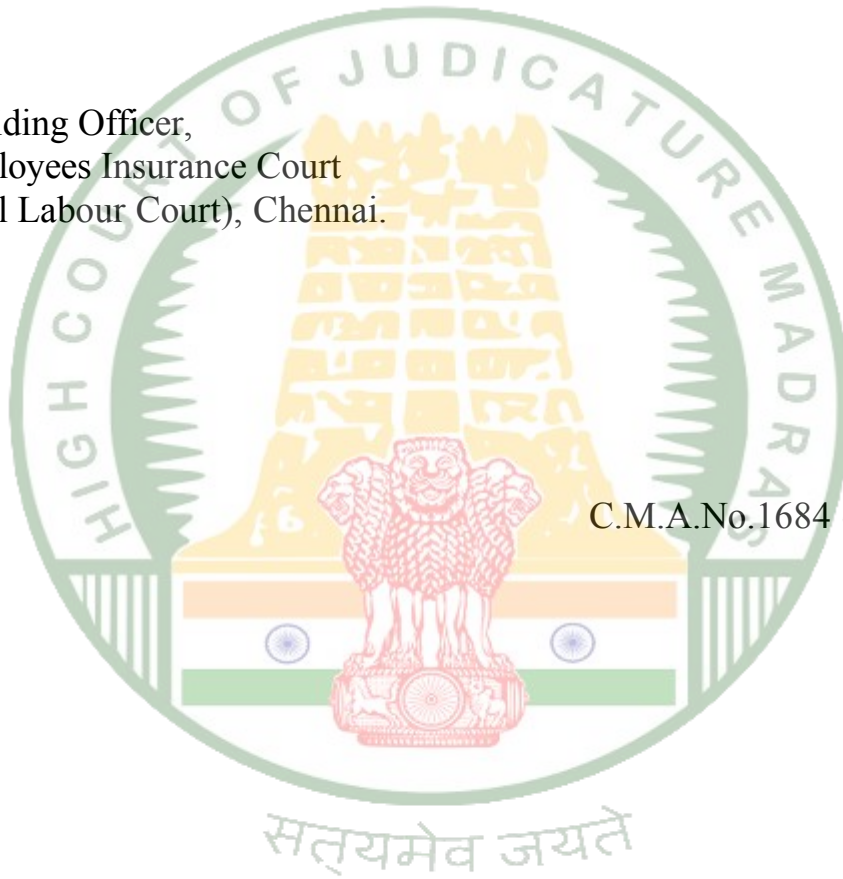
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ABDUL QUDDHOSE, J.

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To :

The Presiding Officer,
The Employees Insurance Court
(Principal Labour Court), Chennai.



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