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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.877 of 2018

Employees State Insurance Corporation,
Rep. by its Regional Director,
No.143, Sterling Road, Chennai-600 034.

..Appellant

Vs.

M/s.WIMCO Ltd.
Rep. by its Senior General Manager,
412, Tiruvottiur High Road, Tiruvottiur,
Chennai-600 019.

..Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 82 (2) of Employees State Insurance Act, to set aside the order dated 28.09.2015 passed in E.I.O.P.No.3 of 2008 on the file of the Employees Insurance Court (Principal Labour Court), Chennai.

For Appellant : Mr.G.Bharadwaj

For Respondent : M/s.Sai raaj Associates

J U D G M E N T

The appellant herein is the ESI Corporation, which preferred this appeal, challenging the order passed in EIOP.NO.3 of 2008, filed by the respondent and to declare that the order in reference No.TN/Ins.VI/51-36034, dated 12.11.2007 as illegal and the petitioner is not liable to pay any interest/ damages in respect of the ESI contribution of Rs.1,49,785/- remitted by him on 06.08.2005, pursuant to the order of the respondent on 01.08.2005 claiming contribution on adhoc claims.

2. On hearing both sides, the Tribunal/ESI Court, allowed the application. Aggrieved by that, the ESI Corporation preferred this appeal.

3. Point for consideration:

"Whether the ESI Court without appreciating the fact that the demand of contribution had



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started from the issuance of C-18 adhoc basis dated 05.02.2005 and not from 01.08.2005 i.e., the date of order passed under Section 45 A of the Act and erroneously held that there is no delay in payment of contribution from the date of order?"

4. The demand of contribution started from the issuance of notice under Form C-18, dated 05.02.2005 and from out of interest for the said contribution amount. But the respondent, without paying such interest, paid only contribution amount. So the ESI Corporation issued notice demanding the interest for the said period.

5. The learned counsel for the respondent submits that immediately after issuance of Form C-18 notice dated 01.08.2005, they remitted the demand amount of Rs.1,49,785/- and also intimated the same to the appellant Corporation on 10.08.2005. But without appreciating the same, the ESI Corporation issued another notice for interest. The authorised representative of the respondent also appeared for personal hearing and submitted a detailed letter denying any liability for the payment of interest for the reason that they remitted the contribution amount within five days from the date of Form C-18 notice.

6. But verification of the records reveals that the respondent paid wages and booked under different heads for the period 4/99 to 3/04, for which contribution is due and also issued spot observation letter and based on the said report, issued Form C-18, dated 10.03.2005. Finally the contribution was arrived to the tune of Rs.1,40,785/- and issued C-18 (adhoc basis) dated 10.03.2005. But within a week, they paid the amount on 06.08.2005, though disputing the interest and damages. But contribution was not paid for the period for which C-18 notice was issued from 4/99 to 3/04 and after issuance of the notice, the respondent herein paid the contribution only but not inclined to pay the interest for the defaulted period for which they are bound to pay the contribution.

7. According to the appellant, they are entitled to claim interest, for which, the appellant relied upon the decision of the High Court of Kerala in the case of Regional Director, ESI Vs. T.K.Bhaskaran [(1997 CJ (Ker) 220)], wherein it has been held as follows:

"5. Further question to be considered is whether the respondent is liable to pay damages in the facts and circumstances of this case even if there was a delay in making the payment of the contribution. This aspect has to be considered in the light of the principles laid down by this Court in the Regional



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Director, ESI Corporation Vs. Sakthi Tiles, 1988 I2) KLT 280. This Court has held that the Corporation will not be justified in levying the damages in cases where the employer, or the person, who is bound to pay the amount in respect of the contribution payable in regard, is able to offer sufficient or cogent explanation for non-remittance, or in cases where there is only a technical or venial breach of the provision of the Act, or there exists bonafide only a technical or venial breach of the provisions of the Act, or there exists bonafide circumstances, which will point out that there was no deliberate omission on the part of the employer. Since the failure to carry out the statutory obligation should be adjudicated by a quasi judicial enquiry and the levy of damages is quasi penal in character, such damages will not ordinarily be imposed unless the party obliged to pay the amount due, acted either deliberately or in defiance of law, or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation. In this case, as mentioned earlier, admittedly the question of coverage of two toddy shops clubbing together was under challenge before the ESI Court and thereafter before this Court. The judgment of the E.I Court is dated June 23, 1977 and that of this Court is dated March 15, 1979. The arrears of contribution were paid by the respondent herein on February 22, 1979. The above would show that the respondent herein was bono fide agitating the question of coverage of the two toddy shops by clubbing them together before the E.I Court as well as this Court. Even before the final decision was given by this Court they remitted the amount pursuant to the second notice dated February 12, 1979. It has also come out that the respondent had paid the interest due on the above amount. Since the facts in this case would show that there was no contumacious conduct on the part of the respondent herein in not paying the contribution within the period prescribed under regulation 31. But he was agitating the question of coverage itself bonafide during the entire period. We are of the view that no damages under Section 85-B is liable to be imposed on the respondent under these circumstances."

8. The Ratio laid down in the above said judgment is squarely applicable to the facts of the present case. The interest payable by the employer would become due at the end of the month of every 21 days, after completion of previous month. The case in hand also reveals that for the period of 4/99 to 3/04, the respondent herein ought to have paid the contribution who failed to do so within 20 days for the last day of wages



period, in which the contribution falls due hence the employer is liable to pay the interest for the period. Therefore, the ESI Corporation has rightly demanded the interest, but without appreciating the fact, the trial Court dismissed the claim.

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9. Accordingly, this Civil Miscellaneous Appeal is allowed, and the order passed by the Employees Insurance Court/Principal Labour Court, Chennai in E.I.O.P.No.3 of 2008 is set aside. No Costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Employees Insurance Court (Principal Labour Court),
Chennai.
- 2.The Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road, Chennai-600 034.
- 3.The Section Officer
VR Section
High Court, Madras 104.

C.M.A.No.877 of 2018

GSM(CO)
SP(26/07/2021)