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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2144 of 2021 and
C.M.P. No. 11827 of 2021

1. M/s. Welcord Component Industries
Rep by its Partner: Prasanna Bhutoria
B-8, PIPDIC Industrial Estate,
Mettupalayam,
Puducherry - 9.
2. Prasanna Bhutoria ... Appellants

Vs

1. The Regional Director,
Employees' State Insurance Corporation,
Puducherry. ... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 82 (2) of the E.S.I. Act, 1948, to answer the "substantial questions of law" in favour of the appellant and consequently allow the present Civil Miscellaneous Appeals by setting aside the Order made in E.S.I.O.P.No.02/2016 dated 30.03.2021 passed by the Court of the Employees State Insurance (Industrial Tribunal cum Labour Court), Puducherry.

For Appellants : Mr. M.A.Mudimannan

For Respondent : Mr. T.N.C. Kausik,
ESIC

JUDGMENT

The appeal has been filed by the appellant, challenging the impugned order dated 30.03.2021 passed by the Employees State Insurance (Industrial Tribunal cum Labour Court), Puducherry in E.S.I.O.P. No.02/2016 on the primary ground that the appellant was not given sufficient opportunity to produce all the records/documents to prove that they are not liable to pay the ESI contribution as demanded by the respondent Corporation under Section 45- A of the Employees State Insurance Act, 1948.



2. According to them, without any basis and purely on presumption, the appellant has been directed to pay a sum of Rs.31,51,932/- (Rupees Thirty One Lakh Fifty One Thousand Nine Hundred and Thirty Two only) as ESI contribution for their employees under the Order dated 30.10.2015, passed by the respondent Corporation under Section 45-A of the E.S.I. Act, 1948.

3. According to them, under Section 45-A of the E.S.I. Act, 1948 proceedings were not in progress, the relevant documents in support of their case were not in their possession as the same was seized by the Central Excise Authorities and therefore they could not produce the same to the respondent. The learned Counsel for the appellant would submit that all the relevant documents are now available with the appellant and if the matter is remanded back to the Original Authority, the appellant will be able to prove their case that they are not liable to pay the ESI contribution as demanded under the order dated 30.10.2015 passed by the Original Authority under Section 45-A of the E.S.I. Act, 1948.

4. Learned counsel for the appellant also drew the attention of this Court to the order dated 30.10.2015 passed by the Original Authority under Section 45-A of the E.S.I. Act, 1948 and would submit that only based on the presumptions and conjecture, the Original Authority has passed the said order, demanding a sum of Rs.31,51,932/- from the appellant towards ESI contribution.

5. This appeal is admitted on the following substantial questions of law:

- a) Whether in the facts and circumstances of the case, the Tribunal is right in accepting the evidence given by the witness at the time of cross examination which is contrary to real facts and opposed to the details culled out by the officers at the time of inspection as mentioned in the Visit Note dated 26.11.2014 in the annexure?
- b) Whether determination of ESI contribution can be made without any positive documentary evidence like seizure of Attendance Register, wage register or any other document to prove suppression of the details by the appellant?
- c) Whether the lower authority or the Tribunal can determine the liability merely based on assumptions and surmises without concrete proof?"



6. As seen from the impugned order passed by the ESI Court on 30.03.2021 as well as by the Original Authority dated 31.10.2015 passed under Section 45-A of the E.S.I. Act, 1948, the ESI contribution amounting to Rs.31,51,932/- has been determined not based on any documentary evidence, but based only on presumption. Since the appellant is now willing to produce all the relevant documents in support of their contentions that they are not liable to pay the determined ESI contribution, one more opportunity must be given to them to produce all the relevant documents in support of their contention that they are not liable to pay the demanded ESI contribution as per the order dated 30.10.2015 passed under Section 45-A of the ESI Act, 1948.

7. This Court also perused and examined the order dated 30.10.2015 passed under Section 45-A of the E.S.I. Act, 1948 and also the impugned order dated 30.03.2021 passed by the ESI Court.

As seen from the said orders, it is clear that the ESI contribution has been determined based on presumption. The relevant paragraphs of the order dated 30.10.2015 passed by the Original Authority under Section 45-A of the E.S.I. Act, 1948 reads as follows:-

(h) This surprise inspection was followed by detailed inspection on 18.11.2014, 19.11.2014 and 26.11.2014. On all these dates the employer failed to produce general ledgers and connected vouchers, connected records for the verification by the Social Security Officers. Instead the employer submitted audited balance sheet, profit and loss accounts for the period 2009-10 to 2012-13. The Social Security Officers computed the omissions on account of difference in salary/wages as mentioned below:

Sl.No	Year	Amount
1	2010-11	4,61,220/-
2	2011-12	3,07,266/-
3	2012-13	1,26,807/-

8. The period upto 30.09.2010 is time barred under the provision to Section 45-A of the ESI Act, 1948. The determination has given below:



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Period	Contribution determined	Basis for Calculation
10/2010 to 08/2011	76,684.00	13x11x8250x6.5%
09/2010 to 10/2014	31,17,758.00	153x38x8250x6.5%
Total Contribution Determined	31,94,442.00	

8. The ESI Court under the impugned order dated 30.03.2021, has also confirmed the order dated 30.10.2015 passed by the Original Authority under Section 45-A of the E.S.I. Act, 1948. Admittedly, on the date of the inspection as well as on the date of the order dated 30.10.2015 passed under Section 45-A of the E.S.I. Act, 1948, the appellant was not in possession of the relevant documents as the same was seized by the Central Excise Authorities.

9. As seen from the impugned orders, only based on the presumption, the determination of ESI contribution, payable by the appellant, has been done. Since the learned counsel for the appellant has submitted before this Court that the appellant is now in possession of all the relevant documents in support of their contention that they are not liable to pay the determined ESI contribution, this Court is of the considered view that the matter may be remitted back to the Original Authority for fresh consideration on merits and in accordance with law after affording a fair opportunity of hearing to both the parties and after permitting the appellant to produce all the relevant records and documents in support of their contention that they are not liable to pay ESI contribution as demanded by the respondent Corporation.

10. For the foregoing reasons, the substantial questions of law formulated by this Court is answered in the following manner:-

a) The impugned order dated 30.10.2015 passed by the Original Authority under Section 45-A of the E.S.I. Act, 1948 as well as the impugned order dated 30.03.2021 passed by the ESI Court in E.S.I.O.P.No.02/2016 are hereby set aside and the matter is remanded back to the Original Authority viz., the Regional Director, Employees' State Insurance Corporation, Puducherry for fresh consideration on merits and in accordance with law.



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(b) The Original Authority is directed to afford a fair hearing to both the parties and also permit the appellant to produce all the relevant records/documents in support of their contention that they are not liable to pay the ESI contribution and pass final orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

12. With the above directions, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Employees State Insurance
(Industrial Tribunal cum Labour Court),
Puducherry.
2. The Regional Director,
Employees' State Insurance Corporation,
Puducherry.

+lcc to Mr.T.N.C.Kaushik, Advocate, S.R.No.54876

+lcc to Mr.K.Jayachandran, Advocate, S.R.No.55195

C.M.A. No. 2144 of 2021

KG(CO)

CB(02/11/2021)