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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. NO.3634 OF 2014

AND

M.P.NO.1 OF 2014

1. Employees' State Insurance Corporation,
through its Joint Director,
Sub-Regional Office,
1897, Trichy Road, Panchdeep Complex,
Ramanathapuram, Coimbatore. ... 1st Appellant/
1st Respondent
 2. The Recovery Officer,
Sub-Regional Office,
1897, Trichy Road, Panchdeep Complex,
Ramanathapuram, Coimbatore. ... 2nd Appellant/
2nd Respondent
- versus
1. M/s Martin Spinning Mills Pvt. Ltd.,
Unit-II, through its General Manager
Mr.Arunachalam,
Door No.54, Mettupalayam Road,
C.N.Mills Post, Coimbatore-641 029.
 2. The Branch Manager,
Karur Vysya Bank,
483, Dr.Nanjappa Road,
Ashoka Plaza, Coimbatore. ... Respondents/
Respondents

Civil Miscellaneous Appeal filed under Section 82 of the Employees' State Insurance Act, 1948 to set aside the order passed in E.S.I.O.P No.6 of 2012 dated 17.12.2013 by the Employees' State Insurance Court, Coimbatore.

For Appellant : Mr.S.P.Srinivasan

For Respondents : No appearance



JUDGMENT

This appeal has been filed by the Employees' State Insurance Corporation aggrieved by the order passed by the Employees' State Insurance Court, Coimbatore, on 17.12.2013 in E.S.I.O.P No.6 of 2012, in which, the recovery notice issued by the appellant/Corporation to recover damages and interest from the first respondent was set aside and the petition filed in E.S.I.O.P No.6 of 2012 under Section 75(2) of the Employees' State Insurance Act, 1948, was allowed in favour of the first respondent.

2.Heard Mr.S.P.Srinivasan, learned counsel for the appellants and there is no representation for the respondents.

3.The appeal is admitted on the following substantial questions of law:-

- (a) Whether the ESI Court was right in allowing the ESIOP by setting aside the recovery notice dated 19.09.2011 and Prohibitory Order dated 24.04.2012 issued by the 2nd appellant herein?
- (b) Whether ESI Court was correct in accepting the claim of the 1st respondent that there was no transfer of establishment under Section 93A of the ESI Act?
- (c) Whether ESI Court was correct in holding that Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950, was not exercised and is applicable to this case?
- (d) Whether in the absence of any finding on the issue of payment of interest amounting to Rs.32,45,295/- due to the ESI Corporation that is mandatory as per 31-A of the Employees' State Insurance (General) Regulations, 1950, the judgment and decree of the Hon'ble ESI Court is sustainable?

4.While passing the impugned order, the Employees' State Insurance Court, Coimbatore, raised the following points for consideration.

- (a) Whether the first respondent is liable to pay the interest and damages which were payable by the erstwhile establishment viz., M/s Lakshana Cotton Spinning Mills Private Limited?
- (b) To what relief the first respondent is entitled to?



5.The contention of the appellant in this appeal as well as before the Employees' State Insurance Court, Coimbatore, is that as regards interest, the first respondent cannot seek waiver under the Employees' State Insurance (General) Regulations, 1950. Even though the Employees' State Insurance Court, Coimbatore, under the impugned order has formulated the aforementioned points for consideration, the said Court has admittedly adjudicated only on the issue of non payment of damages by the first respondent as per Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950. But it did not adjudicate on the issue of non payment of interest even though the Employees' State Insurance Court, Coimbatore, had formulated specific issue on the question of non payment of interest also.

6.It is also the contention of the appellant before this Court as well as before the Employees' State Insurance Court, Coimbatore, that since the first respondent has purchased the plant and machineries from the erstwhile management, they are liable to pay the outstanding ESI contributions to the appellant/Corporation. Even though such a plea was taken by the appellant/Corporation, as seen from the impugned order, the said plea was not adjudicated upon by the Employees' State Insurance Court, Coimbatore.

7.Regulation 31-A deals with interest on contribution due, but not paid on time and it reads as follows:

"31-A. Interest on contribution due, but not paid in time:- An employer who fails to pay contribution within the periods specified in regulation 31, shall be liable to pay [simple interest at the rate of [twelve per cent] per annum] in respect of each day of default or delay in payment of contribution.]"

8.Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950, deals with damages or contributions or any other amount due, but not paid in time.

9.The contention of the appellant/Corporation before this Court as well as before the Employees' State Insurance Court, Coimbatore, is that the first respondent cannot seek waiver for non payment of interest, but can seek waiver only for damages under Regulation 31-C. As seen from the impugned order, Regulation 31-A, which deals with interest on contribution due but not paid in time referred to supra, has admittedly not been considered by the Employees' State Insurance Court, Coimbatore. The Court below has only considered the issue of non payment



of damages by the first respondent. Therefore, this Court is of the considered view that the matter will have to be remanded back to the Employees' State Insurance Court, Coimbatore, for fresh consideration of the following issues.

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(a) Whether the first respondent is liable to pay interest for the delayed payment of the Employees' State Insurance contributions and whether the reasons given for non payment is admissible interest under Regulation 31-A of the Employees' State Insurance (General) Regulations, 1950?

(b) Whether the first respondent is liable to pay Employees' State Insurance contributions payable by the erstwhile management to the extent of the purchase made by the first respondent?

Since the matter is remanded back to Employees' State Insurance Court, Coimbatore, for fresh consideration, there is no necessity for this Court to adjudicate the substantial questions of law formulated by this Court.

10. In the result, the impugned order dated 17.12.2013 passed by the Employees' State Insurance Court, Coimbatore, in ESIOP No.6 of 2012 is hereby set aside and the matter is remanded back to the very same Employees' State Insurance Court, Coimbatore, for fresh consideration with regard to the aforementioned issues alone. The Employees' State Insurance Court, Coimbatore, is directed to pass final orders after giving sufficient opportunities to the appellants as well as the respondents within a period of six months from the date of receipt of a copy of this order.

The appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

raa



To :

1. The Presiding Officer,
Labour Court,
(Employees' State Insurance Court)
Coimbatore.

+1cc to Mr.S.P.Srinivasan, Advocate, S.R.No.52215

C.M.A. No.3634 of 2014

VGII (CO)
PM/10/11/2021