IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4512 of 2019
C.M.P.No.25501 of 2019

M/s.Aruna Agency
Rep.by its Proprietor
N.Sankaranarayanan
No.2, Ashok Pillar Road,
Ashok Nagar, Chennai-600 083. .. Appellant/Petitioner

vs.

Employees' State Insurance Corporation,
Rep.by its Assistant Director,
143, Sterling Road, Nungambakkam,
Chennai-600 034. .. Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948, against the order dated 12.07.2019 in E.I.O.P.No.32 of 2014 on the file of the ESI Court (Principal Labour Court), Chennai.

For Appellants : Mr.A.R.Pradeep
For Respondent : Mr.S.Jayakumari
Standing Counsel for ESI

JUDGMENT

The judgment and decree dated 12.07.2019 passed in E.S.I.O.P.No.32 of 2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The order under Section 45(A) of the ESI Act was passed by the competent authority in proceedings dated 17.10.2013. The said order reveals that the authorities competent determined the contributions for the period from 25.03.2003 to March 2008 and April 2008 to June 2013.

3. The said order reveals that the show cause notice was sent by Registered post with acknowledgement due. The said show cause notice was duly delivered by the postal authorities as per the acknowledgment card received and the same is kept in the file for records. Thus, the employer was afforded an opportunity to represent his case in person at the time of

personal hearing on 20.08.2013. However, the appellant/employer has informed the Authorities that they have remitted a sum of Rs.1,10,541/- vide Cheque dated 19/08/2013 for the period from April 2008 to June 2013. However, the coverage from 2003 to 2008 as stated in the notice was not paid by the employer. Thus, an inference is to be drawn that the employer assumed that he is not liable to pay the contribution from 25.03.2003 to March 2008. However, the employer has chosen to defend his case before the authority under Section 45A.

4. The learned counsel appearing for the appellant made a submission that subsequently, they have paid a part amount of Rs.22,000/-.

5. However, the fact remains that the appellant had not participated in the adjudication process done by the competent authorities under Section 45A of the ESI Act. The payment was made as per the decision taken by the employer himself. Therefore, the authorities proceeded to recover the said amount as per the order under Section 45A of the Act. Thus, the appellant filed an appeal before the ESI Court under Section 75 of the Act questioning the validity of the order dated 17.10.2013.

6. The ESI Court elaborately considered the facts and circumstances and made a finding that the appellant has earlier filed E.I.O.P.No.135 of 2003 which was dismissed by the ESI Court and the said judgment was confirmed by this Court in C.M.A.No.465 of 2013. Thus, it was obligatory on the part of the appellant to pay contribution as soon as the case was dismissed by this Court on 05.04.2013. The appellant has failed to comply with the provisions of the ESI Act pursuant to the orders of this Court dated 05.04.2013. Thereafter, the respondent/Corporation issued a claim on 24.07.2013 for the period from 25.03.2003 to 30.06.2013. The appellant was silent in respect of claim made by the ESI Corporation and the payment made by the appellant was a sum of Rs.22,923/- which was based on the calculation of the appellant which was not acceptable with reference to the order passed by the authority competent under Section 45A of the ESI Act.

7. The ESI Court, with reference to the documents filed by the appellant, made a categorical finding that the appellant has not furnished any evidence to establish their case. The appellant has filed two calculation sheets for the period from 2008 to 2013 and next is for 2003 to 2008 which was the subject matter of E.I.O.P.No.135 of 2003 and C.M.A.No.465 of 2013. Thus, the respondent/Corporation did not accept the calculation made by the appellant for the period from 2003 to 2008 as the issue relating for the period decided by this Court in C.M.A.No.465 of

2013. In view of the said findings, this Court is able to form an opinion that the respondent has no quarrel in respect of contribution for the period from 2008 to 2013 and the claim to be calculated is for the period from 2003 to 2008, in which, a part payment has already been paid. Thus, the balance amount is to be recovered.

8. With reference to the substantial question of law regarding the limitation, the facts are very clear that the assessment was made long back and the said order passed by the competent authorities was challenged before the ESI Court and subsequently, before this Court in C.M.A.No.465 of 2013. The Civil Miscellaneous Appeal was decided by this Court on 05.04.2013. Therefore, the authorities competent issued notice thereafter on 17.10.2013 and the pending of the appeal under Section 75 before the ESI Court as well as under Section 82 before this Court is to be calculated for the purpose of calculating the period of limitation in this case as the Authorities could not able to issue notice or initiate recovery proceedings during the pendency of the E.S.I.O.P as well as the Civil Miscellaneous Appeal before this Court.

9. In this view of the matter, the substantial question of law raised regarding the limitation stands answered against the appellant. Further, the appellant has already made part payment and the respondent is bound to calculate the balance amount to be paid by the appellant with reference to the statutory orders already passed. With these observations, the judgment and decree dated 12.07.2019 passed in E.S.I.O.P.No.32 of 2014 stands confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SSB
To

The Presiding Officer,
Principal Labour Court,
(E.S.I.Court), Chennai.

+1cc to Mr.A.k.Raghavalu, Advocate, S.R.No.18221

C.M.A.No.4512 of 2019
and C.M.P.No.25501 of 2019

CA(CO)
TE(29/04/2021)