IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.3231 OF 2017
AND
C.M.P.NO.20046 OF 2017

Swathy Tex represented by Proprietor,
R.Dhanasekaran
71, Ranganathan Street,
Karungalpalayam,
Erode - 638 003. ..Appellant

Vs.

The Regional Director,
E.S.I.Corporation, 333, Cross Cut Road,
Coimbatore - 12. ..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82(2) of the Employee's State Insurance Act, against the order dated 29.02.2016 in E.S.I.O.P.No.1 of 2012 on the file of the Labour Court, Salem.

For Appellant : Mr.D.Shivakumaran
For Respondent : Mr.K.Prabakar

J U D G M E N T

The order dated 29.02.2016 passed in E.S.I.O.P.No.1 of 2012 is under challenge in the present Civil Miscellaneous Appeal.

2. The Substantial question of law raised by the appellant reads as under:

> "(a) Is not the order passed by the Court below vitiated due to non application of mind, arbitrariness and illegalities?
>
> (b) When the materials on record clearly indicate that the appellant has not been given adequate notice for personal hearing and that the order under Section 45-A of E.S.I.Act has been passed by the respondent herein without giving any reasonable opportunity, is the Court below correct in

law in dismissing the E.S.I.O.P instead of remanding the matter for fresh disposal?”

3. The question of law raised is relatable to the facts and this Court is of the considered opinion that the question of law deserves no further adjudication on the point of law as the factual matrix were elaborately considered by the Court with reference to the documents and evidences.

4. The learned counsel for the appellant mainly contended that no notice or opportunity was provided to the appellant, enable them to defend the case before the authorities competent. Thus, the entire proceedings is in violation of the Principles of Natural Justice. However, perusal of the proceedings reveals that the opportunities were provided and the appellant has not produced all the relevant documents to the authorities concerned and therefore, the authorities, based on the available documents and informations, passed an order under Section 45-A of the Act. The opportunities provided as well as the adjudication done are elaborately considered by the ESI Court and it is suffice, if paragraphs 10 & 11 of the findings are extracted and the same reads as under:

> “10. The petitioner has also contended, that the petitioner's company has been audited for income-tax, and if the court perused the transactions of the petitioner's company, it would show how much of amount was spent as wages paid to the labours of the petitioner's company and they have produced the audited documents for the year 1998-2002, which was marked as ExP5 - ExP9 series to prove the same. They have also submitted that the petitioner's company have placed orders outside their company and paid the production charges to them were also calculated as wages paid to the labours in the petitioner's company. If really, those documents were available with the petitioner on the date of inspection by the Inspector of the respondent Corporation on 1.11.2000 or on the date of personal hearing i.e. 17.12.2002, they could have very well produce those documents with the respondent officials and could avoid further proceedings. But neither on the date of inspection nor on the date of personal hearing or any date before passing of 45-A Order of ESI Act, the petitioner has come forward to produce those documents to prove their contention, instead the petitioner has said to have refused to produce the records before the Inspector. It has been clearly mentioned in Ex.R2/Enquiry report, that the petitioner has refused to produce the records on

01.11.2000 at the time of inspection by the Inspector. No explanation was given by the petitioner for the non-production of the ExP5-ExP9, the accounts for the transactions for the year 1998-2002. ExP5-ExP9 could not be considered as genuine documents, since those documents were not produced before the respondent during inspection and final hearing. Hence, the contention of the petitioner that the respondent has calculated the production charges, paid outside the petitioner's company as wages is not tenable.

11. It is further submitted on the side of the petitioner, that the petitioner is liable to pay Rs.24.464/- as contribution for the wages paid to the labours under the ESI Act, which was calculated and paid through the Cheque No.267886 on 16.4.2004 with the respondent and now it is not liable to pay any amount as claimed by the respondent. The petitioner has not explained the fact, before the respondent by producing the relevant documents to show that they are liable to pay Rs.24.464/- only, either during the date of Inspection or at the time of personal hearing. ExP1 / 45- Order of ESI Act, has been passed on 28.2.2003, but the petitioner has calculated the wages and paid Rs.24,464/- through Cheque No.267886/ExP10 which is not denied by the respondent Corporation. If really, the petitioner is liable to pay only Rs.24,464/- it should have proved the actual wages covered under the ESI Act ad the calculation by the respondent is wrong. Anyhow, after passing an Order Under Section 45-A of ESI Act, the petitioner's company itself calculated the contribution amount and paid by overlooking the amount claimed by the Corporation. Once, the respondent ESI Corporation has calculated the contribution to be paid by the petitioner on adhoc basis, it is for the petitioner to appear in person or through his authorised representative or by filing any statement or objections and to explain what is the actual amount to be paid by the petitioner's company. But, this petitioner has not responded for the Form-C. 18 Notice, and also not turned up for personal hearing on 17.12.2002 instead the petitioner's company has come forward with these explanations while filing the petition under Section 75 of ESI Act before this Court. The respondent Corporation had issued C.18 Notice to the petitioner, as to why assessment should not be made as proposed by the respondent. Since the petitioner has not responded for the C.18 Notice,

> though it was received by the petitioner and also not availing the opportunity by attending the personal hearing, passed the 45-A Order on 28.02.2003. The calculation by the petitioner's company itself, on the basis of ExP5-ExP9, after passing of 45-A Order on 28.02.2003 is not accepted. Also, explanation was offered by the petitioner for the payment of a small amount as contributions belatedly. The petitioner on 16.4.2004 has paid a sum of Rs.24,464/- does not save the company from payment of contributions as calculated by the respondent. Hence, the argument of the petitioner that the company is liable to pay Rs.24,464/- only is rejected."

5. In view of the above findings, this Court is of an opinion that the appellant has not raised any acceptable substantial question of law, warranting further adjudication with reference to the factual matrix or the point of law.

6. Thus, the order dated 29.02.2016 passed in E.S.I.O.P.No.1 of 2012 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.3231 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Labour Court, Salem.

+1cc to M/s.D.Shivakumaran, Advocate, S.R.No.14945
+1cc to M/s.K.Prabakar, Advocate, S.R.No.14958

C.M.A.No.3231 of 2017
AND
C.M.P.NO.20046 OF 2017

JP-II(CO)
CS/01/04/2021