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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A. No.436 of 2022

Shri Nehru Vidayala Matriculation Higher Secondary School,
Rep. by its President Ramesh C Bafana,
No.26, Bhagwan Mahaveer Building,
Tibrewal Nagar, Robertson Road,
R.S.Puram, Coimbatore. ...Appellant

Vs.

- 1.The Deputy Director,
Employees' State Insurance Corporation,
Sub-Regional Office,
No.1897, Trichy Road,
Ramanathapuram, Coimbatore.
2. The Additional Commissioner,
Employees' State Insurance Corporation,
Sub-Regional Office,
No.1897, Trichy Road,
Ramanathapuram, Coimbatore. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948 to set aside the decree and judgment passed in E.S.I.O.P.No.102 of 2019 by the Presiding Officer, Principal Labour Court, Employees' State Insurance Court, Coimbatore dated 28.10.2021.

For Appellant : Mr.Aashish Jain Lunia

For Respondents : Mr.S.P.Srinivasan
Standing Counsel

J U D G M E N T

The petitioner before the Employees' State Insurance Court, Coimbatore is the Appellant before this Court challenging the order passed by the Employees' State Insurance Court (herein



after referred to as ESI Court), Coimbatore in E.S.I.O.P.No.102 of 2019.

2. The facts in brief are as follows:

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The first respondent had issued a show cause notice dated 12.06.2018 to the Appellant, calling upon the Appellant to show cause against the proposed determination and recovery of a sum of Rs.58,21,745/- as the amount of contribution. The show cause notice had directed the Appellant to submit their objections to the show cause and to appear before him on 31.08.2018 with all the relevant records.

3. The Appellant in response to the show cause notice had attended the personal hearing on 31.08.2018 and the authorized representatives of the Appellant Company had requested time for producing further records and for making their detailed submissions. The hearing was therefore adjourned to 14.09.2018.

4. The first respondent by order dated 28.09.2018 under Section 45 (A) of the Employees' State Insurance Act, 1948 (herein after referred to as ESI Act) directed the Appellant to pay a sum of Rs.54,64,632/-. The order of the first respondent directed the Appellant to pay the aforesaid sum covering the period from 01.09.2013 to 30.04.2018. This order was taken up on challenge to the Appellate Authority, who by order dated 21.05.2019 had reduced the contribution amount to a sum of Rs.48,08,176/- being the admitted amount of contribution. The Appellant was directed to pay the said sum which constituted the period from 01.09.2013 to 30.04.2018. The Appellant had already paid a sum of Rs.13,66,158/- while preferring an Appeal under Section 45 (AA) and what remains payable was the sum of Rs.34,42,018/-.

5. Aggrieved by this order, the Appellant had challenged the said order by filing E.S.I.O.P.No.102 of 2019 on the file of the Presiding Officer, Principal Labour Court, Employees' State Insurance Court, Coimbatore. By order dated 28.10.2021, the ESI Court had dismissed the petition filed by the Appellant. The main fulcrum of the objection is that the demand is barred by limitation. The impugned order has been issued for a period beyond the prescribed five years as provided under Section 45 A (1) of the Act.

6. The Appellant would submit that the contributions commence from 01.06.2013 and in order to bring it within the limitation period the Authority has unilaterally shifted it to



01.09.2013. Therefore, he would submit that the impugned order has to necessarily be set aside.

7. Mr.S.P.Srinivasan, learned Standing Counsel appearing on behalf of the respondents would however contend that as per the 2nd proviso to Section 45 (A) (1) of the ESI Act, the order shall not be passed beyond the period of five years from the date on which the contribution become payable. Therefore, the impugned order passed by the first respondent would clearly come within the period prescribed under 2nd proviso to Section 45 (A) (1) of the ESI Act.

8. Heard the learned counsels appearing on either side and perused the materials available on record.

9. Originally the respondent authority had issued a show cause notice dated 12.06.2018 seeking contributions of a sum of Rs.58,21,745/-. Show cause notice had been issued in the month of June 2018 and therefore the claim from June 2013 was very much within the period prescribed under the above proviso. Thereafter, when the order under Section 45 (A) was passed, once again the period of payment of the contribution was from 01.09.2013 to 30.04.2018. Once again the order was well within the period of time prescribed under the ESI Act.

10. Considering the fact that only this point was canvassed and as the Court finds that there is no merit in the said argument, the Civil Miscellaneous Appeal is dismissed. No Costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

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



2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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+1 CC to Mr.S.P.Srinivasan, Advocate sr 26427.

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SKM(CO)
SP(10/05/2022)