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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	06.12.2021
DELIVERED ON	06.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.947 of 2021

The E.S.I Corporation,
Sub Regional Office, (Tirunelveli)
Salai Street, Vannarpettai,
Tirunelveli,
Rep. By its Joint Director

...Appellant

Vs.

Tamil Nadu Jaibharath Mills Limited,
Malayankulam Village,
Chidambarapuram,
Sankarankoil Taluk,
Tirunelveli District.

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employee State Insurance Act, 1948, to set aside the order, dated 10.05.2021, passed by the E.S.I. Court (i.e, Labour Court), Tirunelveli, in E.S.I.O.P.No.75 of 2019, reinstate the damages order dated 04.02.2019 of the E.S.I. Corporation and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellant.

For Appellant :Mr.M.Laxmi Mahendraa

For Respondent :Mr.K.Hemakathikeyan

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the order, dated 10.05.2021, in E.S.I.O.P.No.75 of 2019, passed by the learned E.S.I. Court (i.e, Labour Judge), Tirunelveli.

2.The respondent herein/Petitioner has filed a petition in E.S.I.O.P.No.75 of 2019 on the file of the Labour Court, Tirunelveli, under Section 75(1)(g) of the E.S.I.Act, to quash the impugned order 85-B order, dated 04.02.2019 for the period from



04/2008 to 03/2009 passed by the appellant herein directing the petitioner to pay a sum of Rs.1,83,740/-and the same was allowed on 10.05.2021. Against the said order, the appellant is before this Court.

3.Heard on either side. Perused the material documents placed on record.

4.The respondent/petitioner's case is that the establishment of the respondent/petitioner was covered under E.S.I. Act and Code No.66000321830000101 allotted by the appellant vide Form C 11. Due to various reasons, the net worth of the respondent/petitioner's mill eroded due to accumulated losses and could not able to run the mill and hence there was a loss to a tune of more than Rs.10 crore in 2008 onwards. The respondent/petitioner has decided to approach the Board for Industrial Finance and Reconstitution. The respondent/petitioner's Mill was declared as Sick Industrial Company in terms of Section 3(1)(o) of Sick Industrial Companies (Special Provisions)Act 1985 and thereby appointed State Bank of India as the operating Agency. The appellant officials has inspected the respondent/petitioner's establishment and verified the records. The respondent/petitioner's SSO initiated steps to determine the contribution for the period 11/2006 to 03/2007 and passed 45-A order. The respondent/petitioner state with great difficulty the determined amount remitted by the respondent/petitioner. Subsequently, the appellant officials have initiated steps to determine Damages and passed 85-B damages order for a sum of Rs.2,36,550/-. The respondent/petitioner has filed a petition in E.S.I.O.P.No.9 of 2012 on the file of Labour Court, Tirunelveli, challenging the said 85-B damages order, dated 26.01.2012 and the Labour Court has passed an order on 21.08.2012 setting aside the 85-B damages order and allowed the E.S.I.O.P.No.9 of 2012. The appellant has initiated steps to determine the contribution for the period from 4/2008 to 3/2009 and passed 45-A order (108/2013) dated 04.09.2013 directing the petitioner to remit a sum of Rs.3,11,016/-. The respondent/petitioner with great difficulties mobilized the funds and remitted the said damages amount on 07.09.2013. Subsequently, the appellant has initiated steps to determine the damages and accordingly issued D-18 Damages Notice 66-00-032183-000-0101-D-18-875/13 for the period from 2008-2009 dated 08.02.2014 claiming amount of Rs.1,83,740/-from the respondent/petitioner and fixed personal hearing on 19.02.2014. The respondent/petitioner sent letter on 19.02.2014 informed that there was no wilful default on the part of the petitioner and requested to waive the proposed damages since there is no *Mens Rea* and requested the appellant to consider the mitigating circumstances and further stated the financial position of the mill and about declaration of Sick Unit under BIFR and requested to waive the damages and drop all further proceedings in this regard. The appellant without appreciating the respondent/petitioner's contentions hurriedly passed 85-B damages



5.The appellant/respondent has stated in his counter that the respondent/petitioner is a chronic defaulter and he cannot escaped from the statutory liability by merely saying that his mill is in financial difficulties and sickness and he has paid the contribution with enormous delay for the disputed period for 4/2008 to 3/2009. The payment of E.S.I. contribution is a statutory responsibility. The delay in payment attracts levy of damages from the due date to the date of payment.

6.Admittedly, the respondent/petitioner's unit was covered under the E.S.I.Act. Already, 85(B) notice was quashed for the period from 11/06 to 03/07 in E.S.I.O.P. No.9 of 2012 on 21.08.2012. The unit was decided to declare as sick unit in the year 2013. The proceeding was also marked as Ex.P.7.

7.Now for the period 4/08 to 3/09, 45(A) notice was issued and the respondent unit paid Rs.3,11,016/-. The present disputed notice insured under 85B of E.S.I. Act for damages for belated payment. The notice was issued on 04.02.2019.

8.The ingredients of **Section 85(B) of E.S.I. Act**, is extracted hereunder:

"85-B : Power to recover damages:-

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover [from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations]:

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue."

9.Already, the respondent/petitioner's unit is a sick unit. Previously, Section 85-B notice also quashed by the E.S.I. Court. No proof and pleadings for action taken against the order in E.S.I.O.P.No.9 of 2012. Against the appellant, issued notice for damages. The Corporation should consider the Proviso of Section 85B of E.S.I. Act.

10.Since the respondent/petitioner's Mill is running under loss it has not paid the subscription amount within stipulated period. Therefore, the delay is not by wilful act of the petitioner. Admittedly, the respondent/petitioner has paid the



subscription amount assessed by the Corporation.

11. So, the E.S.I. Court has rightly allowed the E.S.I.O.P.No.75 of 2019. Hence, this Court has no valid reason to interfere with the findings passed by the Court below.

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12. Finally, this Civil Miscellaneous Appeal is dismissed by confirming the order, dated 10.05.2021, in E.S.I.O.P.No.75 of 2019, passed by the learned E.S.I. Court (Labour Judge), Tirunelveli. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The E.S.I. Court (Labour Judge),
Tirunelveli.

2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

C.M.A. (MD) .No. 947 of 2021

06.01.2022

RD(20.01.2022) 4P 4C