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W.P.No.16984 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.16984 of 2013 and
MP.No.1 of 2013

1.Lord Shoe Makers P. Ltd.,
Rep. by its Managing Director,
S.B.P.Madan Mohan,
No.49/2, Gandhi Nagar,
3rd Main Road,
Adyar, Chennai 600 020

2.S.B.P.Madan Mohan

... Petitioners

Vs.

1.The Director,
Regional Office(Tamilnadu),
Panchdeep Bhawan,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai 600 034

2.The Joint Director,
Regional Office(Tamilnadu),
Panchdeep Bhawan,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai 600 034

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records from the



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Office of the second respondent and to quash the impugned order passed by the second respondent dated 03.06.2013 in No.TN/Ins.VI/51-00-019705-000-0202.

For Petitioners : Mr.N.Kumar
for M/s.Kumar and Baskar

For Respondents : Mrs.S.Jayakumari
for ESI

ORDER

The writ petition is filed challenging the order passed by the second respondent dated 03.06.2013 in No.TN/Ins.VI/51-00-019705-000-0202 thereby directed the petitioners to pay damages to the tune of Rs.4,78,901/- under Section 85 B of Employees' State Insurance Act for delayed payments of amount of contribution for the period from April 1996 to January 1998.

2. Heard, Mr.N.Kumar, the learned counsel for the petitioners and Mrs.S.Jayakumari, the learned counsel for the respondents.

3. According to the petitioners, they have paid the contribution with interest and penalty on 27.08.2009 to the tune of Rs.8,39,000/- on



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receipt of the summons from the Recovery Officer dated 19.08.2009. The petitioners had paid full contribution by way of demand draft dated 27.08.2009 in favour of ESI fund. After payment, they also sought for interim certificate pertaining to their account. While being so, they received the impugned order dated 25.10.2012 claiming damages to the tune of Rs.4,78,901/-. On receipt of the same, the petitioners submitted their objections on the ground that the amount has been paid long back in the month of August 2009 itself along with interest and penalty. There was no evil intention on the part of the management for the delayed payment of contribution. The delay was only due to lock-out and closure of the company due to labour and financial crisis from the month of September 1995 to December 1998.

4. The respondents filed counter and stated that the damages is a deterrent and in the nature of penalty. A sum of Rs.8.39 lakhs paid by the petitioners does not cover any damages. Damages are proposed only after discharge of contributions. The amount recovered from the petitioners was only contributions due for the period till January 1998



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with interest for the belated period of contributions. Therefore, the petitioners never paid any penalty. Therefore, there is no limitation for the levy of damages as provided under Section 85 B of the ESI Act.

5. In this regard, the learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India rendered in ***Civil Appeal No.340 of 2008*** in the case of ***Employees' State Insurance Corporation Vs. HMT Limited and another***, wherein it is held that provision under Section 85B of the ESI Act provides an enabling provision. It does not envisage mandatory levy of damages. It does not also contemplate computation of quantum of damages in the manner prescribed under the regulations. It is also followed by the Division Bench of this Court. The statute itself does not say that a penalty has to be levied and only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceedings would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a



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provision would not be held to providing any mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance of the principles of natural justice is necessary thereunder. It is relevant to extract provision under Section 85B of Employees' State Insurance Act hereunder:

85B. 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.

(2) Any damages recoverable under sub-section(I) may be recovered as an arrear of land revenue or under section 45C to section 45-I.

6. It is clear that when 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.



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7. As stated supra, the petitioners could not able to pay their contributions in time for the reason due to lock-out and closure of the company. Further, they paid their contribution belatedly along with interest and penalty in the year 2009 itself. The same was duly received by the respondents. After period of three years, the petitioners were served with notice and thereafter the impugned order was passed thereby directed to pay a sum of Rs.4,78,901/- as damages. Therefore, the impugned order cannot be sustained and it is liable to be set aside. Accordingly, the impugned order passed by the second respondent dated 03.06.2013 in No.TN/Ins.VI/51-00-019705-000-0202 is quashed and this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

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No.143, Sterling Road,
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- 2.The Joint Director,
Regional Office(Tamilnadu),
Panchdeep Bhawan,
Employees State Insurance Corporation,
No.143, Sterling Road,
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Chennai 600 034
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.
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