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C.M.A.No.1876 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2023

PRONOUNCED ON : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.1876 of 2021

and

CMP.No.10121 of 2021

M/s. Suparna Cotton Spinners India Ltd.,
rep. By its Managing Director,
V.Jegannathan,
132, Palani Road,
S.V.Mills Post, S.V.Mills Post,
Udumalpet – 642 128.

... Appellant

- Vs -

The Employees State Insurance Corporation,
Rep.by its Joint Director,
Sub-Regional Office 1897,
Panchdeep Complex, Trichy Road,
Ramanathapuram, Coimbatore – 641 045

... Respondent

Civil Miscellaneous Appeal is filed under Section 82 (2) of the Employees State Insurance Act 1948, against the Order and decree dated 08.07.2020 and made in ESIOP.No.10 of 2015 on the file of the Employees State Insurance Court, Principal Labour Court, Coimbatore.

For Appellant : M/s.S.Haroon
for M/s.T.S.Gopalan and Co.,
For Respondent : Ms.S.Jayakumari

JUDGMENT



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The appellant herein is the petitioner before the Tribunal. The appellant has filed the instant appeal aggrieved by the order passed by the Employees State Insurance Court, Principal Labour Court, Coimbatore in ESIOP.No.10 of 2015, dated 08.07.2020.

2. For the sake of convenience, the parties are referred to as per their ranks mentioned in the petition.

3. According to the petitioner, they are a textile mill and having 75 employees on their roles. It is the specific case of the petitioner that the respondent has issued a Show Cause Notice dated 27.12.2010 claiming damages of Rs.2,44,358/- in respect of belated remittance of contribution for the period 05/2006 to 03/2008 and 04/2009 and 03/2010. It is the submission of the petitioner that they have paid the above damages on 07.09.2013. The petitioner further states, even thereafter, a Show Cause Notice was issued on 13.02.2015 seeking to recover a sum of Rs.2,321 for belated remittance of the contribution for the period 2007-09. Further, the respondent has issued another Show Cause Notice levying damages of Rs.4,01,564/- for the period 2006-07, 04/2008 to 03/2009 and 04/2010 to 09/2010. It is also submitted



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that the petitioner closed the factory from 21.04.2011 and they have not engaged any employees thereafter. In the above line, the petitioner has submitted an explanation and also suggest for personal hearing. On 24.03.2015, the Director of the petitioner firm appeared in the personal hearing, and a reply to the show cause notice was submitted *inter alia* seeking waiver of damages. In spite of the same, the respondent passed an order of rejection dated 25.03.2015 stating that waiver can be considered only if the firm is declared as a sick industry by BIFR. Therefore, the petitioner has filed the application under Section 75 of the Employees' State Insurance Act in ESIOP No. 10 of 2015 before the Court below.

4. According to the respondent, they admits the payment of Rs.2,44,358/- against the Show Cause Notice dated 25.03.2015 for the period from 05/2006 to 03/2008 and 04/2009 and 03/2010. They contend that the damages determined under Section 85-B is only for the period from 2008 to September 2010. However, while drafting the order under Section 85-B, an inadvertent typographical error had crept in by referring the period 2014. Even though the petitioner has paid the contributions, it was irregular and belated one. The delay ranges from 89 days to 1521 days. Therefore the respondent



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prayed to dismiss the application.

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5. Before the ESI Court, no oral evidence was let in by both sides. The petitioners filed 17 documents and marked as Ex.P1 and Ex.P17. No document was marked on the side of the respondent.

6. After considering the pleadings, evidences, materials on record, the Trial Court has set aside the impugned order dated 25.03.2015 and remitted back the matter before the respondent authority to consider the case afresh, after giving sufficient opportunity to the petitioner to show cause for the period from 4/2009 - 3/2010 and also from 5/12 to 5/14. Aggrieved with the above order, the petitioner/appellant is before this Court.

7. The learned counsel for the petitioner/appellant would submit that the order of remand, to issue a notice afresh for the period 4/2009-3/2010 and also to 5/12 to 5/14 is defective as there was no notice for the period 5/2012 to 5/2014, before passing the impugned order dated 25.03.2015. It is also the further submission of the learned counsel for the petitioner/appellant that vide Show Cause Notice-Ex.P1 dated 27.12.2010, the respondent has already



issued a notice for the period 05/2006 to 03/2010 proposing damages of Rs.2,44,358/- and ultimately, the same was paid. He also would further contend that, thereafter, another notice was issued under Ex.P11 dated 16.02.2015 for the very same period, which is contrary to law. Therefore, the learned counsel for the appellant would strenuously contend that the very order of the ESI Court is defective and is liable to be quashed.

8. Per contra, the learned counsel for the respondent would submit that though Ex.P1, notice appears to have been issued for the period covering May 2006 to March 2010, the same did not cover the period from April 2008 to March 2009. That is why Ex.P11 notice dated 16.02.2015 was issued for the period from 04/2008 to 09/2010. The learned counsel for the respondent also invited the attention of this Court to the finding of the Trial Court, and would contend that the damages proposed in Ex.P11, Show Cause Notice dated 16.02.2015 was set aside by the Trial Court. The learned counsel for the respondent would fairly submit that, for the period 05/2012 to 05/2014 the respondent will issue a fresh notice, calling for an explanation, and to this extent, the respondent fairly concede that the order of the Trial Court may be modified.



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9. This court has carefully perused the order of the Trial Court. The Trial Court taking into consideration of the evidence and records, has rightly held that, no explanation found as to how the damages have been computed at Rs.19935.44/- for the period 2006-2007. Eventually, the Trial Court has rightly set aside the impugned order.

10. The learned counsel for the respondent has fairly admitted that the petitioner has already paid the damages for the period 05/2006 to 03/2008. Thus the petitioner cannot be once again called upon to pay the damages for the above period.

11. Further, it is pertinent to mention that the respondent did not issue any notice prior to Ex.P11 notice dated 16.02.2015 proposing damages for the period 04/2008 to 03/2009, which factum was rightly appreciated by the Trial Court. However, the Trial Court without taking into consideration of previous notice for the period 04/2009 to 03/2010 in Ex.P1 notice, has again permitted the respondent to issue a fresh notice. As fairly submitted by the learned counsel for the respondent, there cannot be any fresh proceedings for the



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period 04/2009 to 03/2010. Thus the order of remand for the period from 04/2009 to 03/2010 is liable to be set aside.

12. Hence, this Civil Miscellaneous Appeal is partly allowed by confirming the order of the trial Court as indicated above. However, the order of remand for the period from 04/2009 to 03/2010 is hereby setting aside. Consequently, connected miscellaneous petition is closed.

01.08.2023

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Index : yes/no

Speaking/Non Speaking Order

To

1. The Employees State Insurance Court,
Principal Labour Court, Coimbatore.
2. The Joint Director,
The employees State Insurance Corporation,
Sub-Regional Office 1897,
Panchdeep Complex, Trichy Road,
Ramanathapuram, Coimbatore – 641 045.
3. The Section Officer,
V.R.Section, High Court,
Madras.

C.KUMARAPPAN, J.



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Pre-Delivery Judgment
in
C.M.A.No.1876 of 2021

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