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C.M.A.No.464 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.464 of 2014

The Pondicherry Co-operative
Wholesale Stores Ltd., No.P.44,
Rep by its Managing Director,
Mr.T.Chanemougam
288, Mahatma Gandhi Road,
Puducherry – 605 001

.. Appellant/petitioner

Vs.

The Regional Director
Employees State Insurance Corporation
ESI Complex, Bouuvankare Street,
Mudaliarpet, Pondicherry.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Order dated 29.05.2013 in ESIOP.No.11 of 2011 on the file of the Employees Insurance Court, Pondicherry.

For Appellant : M/s.Renuka Devi

for M/s.R. Sreedhar

For Respondent : Mrs.Jayakumari



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant to set aside the Order dated 29.05.2013 in ESIOP.No.11 of 2011 on the file of the Employees Insurance Court, Pondicherry.

2. The appellant is the petitioner in ESIOP.No.11 of 2011 on the file of the Employees Insurance Court, Pondicherry. Based on the inspection, the respondent sent a show cause notice dated 18.07.2008, claiming compensation of Rs.2,88,713/-. In response to the said notice the Deputy Manager of the appellant has appeared before the Deputy Director of the respondent on 26.08.2008. In the enquiry held on 27.08.2008, the Senior Assistant of the appellant appeared and filed documents required by the Deputy Director. Thereafter, the respondent passed orders dated 05.09.2008 under Section 45-A of the Act assessing the ESI contribution at Rs.2,77,295/- for the wages from 1998-1999 to 2003-2004. However, the respondent/Corporation submitted an application dated 23.09.2008 for recovery of contributions under Sections 45-C to 45-I of the Act to the



Recovery Officer of the respondent, claiming a sum of Rs.3,05,883/-. It was followed by the demand to default dated 29.09.2008. In furtherance to the notice dated 17.10.2008, the Indian Bank has deducted a sum of Rs.3,10,906/- from the account of the appellant. Hence the appellant has filed the petition in ESIOP.No.11 of 2011 before the Employees Insurance Court, Pondicherry.

3. The Employees Insurance Court, Pondicherry, based on the documents produced by the petitioner/appellant as well as by the respondent, has dismissed the petition and directed the petitioner to pay the contribution for the period from 1998-1999 to 2003-2004 as stated in the orders sent by the respondent.

4. Not being satisfied with the order passed by the Employees Insurance Court, Pondicherry, the appellant has come out with the present appeal challenging the order of the Employees Insurance Court, Pondicherry,

5. The learned counsel appearing for the appellant contended that the Employees Insurance Court, Pondicherry, is contrary to law, weight of



evidence and probabilities of the case. He further submitted that the Insurance Court failed to appreciate the fact that the documents related to wages and attendance pertaining to the year April 2004 to March 2008 was under Audit and the same was communicated to the respondent. It ought to

have rejected the show cause notice and statement made by the respondent that the appellant is the principal employer and there was a due in ESI contribution to the tune of Rs.2,88,713/- paid to the loadman and workers engaged as and when required by the appellant. It ought to have observe the infirmities found in the order dated 05.09.2008 passed by the respondent Corporation under Section 45-A of the Act. It failed to note that the urgency showed by the ESI Corporation by issuing Recovery Certificate and recovered from the appellants account operated with Indian bank. It failed to note that there was no discussion in the assessment order dated 18.07.2008 regarding omitted wages. It failed to fact that there is no employer – employee relationship between the persons who have been engaged on a temporary basis. It erred in coming to the conclusion that the wages in the name of Coolie paid to the labourers engaged in temporary employments who are also working for some other persons are coming under the definition of wages on

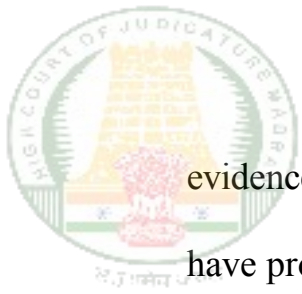


contra it has to be considered as omitted wages as per the Act. It failed to note that the application for recovery of contribution dated 23.09.2008 and the notice of demand to the defaulter dated 20.09.2008 has been signed by the Deputy Director. Hence, he prayed to allow this appeal.

6. The learned counsel for the respondent has submitted that the order passed by the Employees Insurance Court, Pondicherry, is just and reasonable one and therefore he prayed to dismiss the Appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the entire materials on record.

8. Upon perusal of the materials available on record, it is seen that the appellant was not disagreeing with the order and specifically had not challenged the order under Section 45-A dated 05.09.2008, but requested the respondent corporation to extend 45 days time to remit the said ESI contribution ordered in the said order. Moreover, inspite of opportunity given to the appellant, they have not produced any other relevant tangible material



evidence to withstand their contention. If they are not really wages, he could have produced the basic vouchers and other connected records and thereby he could have got it dropped from the purview of the contribution at the inspection stage itself. The financial status of the appellant and the loss accumulated cannot be valid ground for the consideration of lenient view in determining the statutory contributions. Hence, in the considered opinion of this court, the ESI Court has rightly dismissed the petition and the same does not warrant any interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed and award passed on 29.05.2013 in ESIOP.No.11 of 2011 by the Employees Insurance Court, Pondicherry, is confirmed. No costs.

12.04.2023

Index : Yes / No
Internet : Yes / No
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To

- 1.The Regional Director
Employees State Insurance Corporation
ESI Complex, Bouuvankare Street,
Mudaliarpet, Pondicherry.
2. The Section Officer,
VR Section,
High Court, Madras.



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A.A.NAKKIRAN.,J.

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