IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1486 of 2023
and C.M.P.No.15190 of 2023

M/s.Southern Fulfillment Service,
Rep. by its Proprietrix,
D.Santa
W/o.Dhinakararajan,
Its rep. by their duly Authorized Representative,
K.Vidhyasagar,
S/o.Krishnamoorthy. ... Appellant

Versus

The Employees State Insurance Corporation,
Rep. by its Deputy Director,
Sub-Regional Office,
Coimbatore – 641 045. ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order XLI Rule 1 of Civil Procedure Code, against the order dated 05.04.2022 passed in ESIOP No.24 of 2018, confirming the order dated 07.11.2016 passed in No.56-00-112291-000-0999-Ins.IV/TDR on the file of the Employees State Insurance Corporation, Coimbatore.

For Appellant : Mr.B.Gopalakrishnan

For Respondent : Mr.P.Srinivasan

JUDGMENT

This appeal has been filed by the appellant/petitioner challenging the order passed in ESIOP No.24 of 2018, dated 05.04.2022 by the respondent, confirming the order passed under Section 45-A of the Employees State Insurance Act 1948, (hereinafter referred as “the ESI Act”).

2.The appeal arises under the following circumstances:-

2(a)The appellant establishment was covered under the ESI Act and they had paid contribution for upto the assessment year 2010-2011. Thereafter, they had neither paid contribution nor informed the authorities about the closure of business. Hence, the respondent had passed an order under Section 45-A of the ESI Act, calling upon the appellant to pay a sum of Rs.3,42,539/- as contribution for the assessment period of 2011 – 2012 and 2012-2013.

2(b)The appellant challenged the said order before the ESI Court in ESIOP.NO. 24 of 2018. The ESI Court, after considering the evidence on record held that the order passed by the respondent is in accordance with law and dismissed the petition filed by the appellant.

3.Aggrieved over the same, the present appeal has been preferred.

4.The learned counsel for the appellant submitted that the respondent as well as the ESI Court had failed to consider the fact that the appellant closed its business in the year 2013; that the income tax assessment would show that for the assessment year 2012 -2013, there was no income for the appellant concern and hence, the order passed by the respondent is liable to be set aside and prayed for allowing the appeal.

5.The learned counsel for the respondent per contra submitted that the appellant had not filed any ESI returns during the said period. They had neither paid the contribution nor informed the respondent about the alleged closure of business. Whereas, it is seen from the records that the appellant surrendered the license only in the year 2015. Therefore, the learned counsel submitted that the order passed by the respondent was rightly confirmed by the ESI Court, which is in accordance with law and no interference is called for and hence, prayed for dismissal of the appeal.

6.Heard the learned counsel for the appellant as well as the respondent.

7.On perusal of the order passed by the respondent under section 45-A of the ESI Act, this court finds that the Social Security Officer of the respondent inspected the appellant's premises on 08.03.2016 and found that the appellant was liable to pay contribution on salaries, wages and labour charges. The Social Security Officer had also found that the total wages of Rs.52,69,839/- was paid to the staff and has given the break up calculation. The respondent assessed the contribution as 6.5% of the total wages, which is Rs.3,42,539/-. It is also seen from the order that though the appellant was given opportunity to respond to the C-18 Adhoc Notice dated 08.08.2016, the appellant had not availed of the said opportunity. The ESI Court, considering the above facts held that the appellant had failed to point out any illegality in the order passed by the respondent. This Court finds no infirmity in the said finding of the ESI Court as well as in the order passed by the respondent under section 45-A of the ESI Act.

9.Further, an appeal before this Court is maintainable only when a substantial question of law is involved. In the instant appeal no question of law has been raised much less a substantial question of law and hence, the appeal is liable to be dismissed

10.At this juncture, the learned counsel sought time to make payment of the contribution. In view of the above, the Civil Miscellaneous Appeal is disposed of with the following directions:

10(a)The appellant is granted five (5) months time to deposit the contribution amount determined by the respondent. The learned counsel submitted that the appellant may have already deposited 50% of the contribution amount. If the appellant had already deposited 50% of the contribution amount, the respondent is permitted to withdraw the same. The appellant shall deposit the entire amount, less the amount deposited if any, directly to the respondent within a period of five (5) months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2023

rst

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To:

1.The Employees State Insurance Corporation,
Coimbatore.

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

SUNDER MOHAN, J.

rst

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