



C.M.A.No.124 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.124 of 2021

The Regional Director,
Employees State Insurance Corporation,
143, Sterling Road, Chennai – 600 034.

... Appellant/Respondent

Vs.

M/s.Karamal Garment Exports
No.226, First Floor,
Purasawalkkam, Chennai – 600 007.

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of State Employees Insurance Act, 1948 against the presiding officer, Principal Labour Court, Chennai (Employees State Insurance Court constituted under ESI Act) dated 24.11.2009 and made in EIOP No.391/2001 to set aside the same.

For Appellant : M/s.G.Narmadha
for M/s.G.Bharadwaj

For Respondent : Mr.P.Subba Reddy

JUDGEMENT

The Civil Miscellaneous Appeal has been filed to set aside the order dated 24.11.2009 passed in EIOP No.391/2001 on the file of the presiding



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officer, Principal Labour Court, Chennai (Employees State Insurance Court constituted under ESI Act).

2. It is the case of the appellant that the Employees State Insurance Corporation (in short 'ESI Corporation') has issued an order u/s.45A of the Employees State Insurance Act dated 18.08.1999 claiming contributions to the tune of Rs.3,60,341/- for the period from 1991 to 1992, 1994 to 1995 and 1995 to 1996 as against the first respondent company which is engaged in the business of manufacturing and exporting textile goods and accessories. Aggrieved over the same, the first respondent / company filed a petition u/s.75 of the Employees State Insurance Corporation Act, 1948 before the Labour Court to set aside the 45A order, wherein the Labour Court vide order dated 24.11.2009 directed the first respondent to pay a sum of Rs.19,284/- to the appellant. Challenging the same the present appeal has been filed before this Court seeking the aforesaid relief.

3. The learned counsel for the appellant submits that though the Labour Court allowed the appeal based on the document relied upon by the first respondent marked as Ex.R1 which contained the list of coded employers,



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however, the first respondent failed to reveal the employee details and their codes either in the petition filed by the first respondent before the Labour Court or in the reply given by the first respondent for the show cause notice issued by the ESI Corporation. In the absence of such employee details, the Labour Court passed the award in favour of the first respondent which is *per se* unsustainable. He further submits that without the details of the employers, the ESI authority would not be able to recover the amount from the outsourcing agencies. Hence, he prayed to allow this appeal.

4. The learned counsel for the first respondent submits that the first respondent company was closed much earlier when the show cause notice was issued. He further submits on instructions the first respondent is ready to pay the entire amount to the tune of Rs.3,60,341/- without any interest to the ESI Corporation.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed on record.



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6. Admittedly the ESI authority initiated proceedings u/s.45A as against the first respondent Company seeking contributions to be payable by them for the period from 1991 to 1992, 1994 to 1995 and 1995 to 1996 to the tune of Rs.3,60,341/-. Challenging the 45A order, the first respondent filed a petition in E.I.O.P.No.391 of 2001 on the file of the presiding officer, Principal Labour Court, Chennai (Employees State Insurance Court constituted under Employees State Insurance Act, 1948), wherein the Labour Court allowed the appeal in favour of the first respondent based on the documents relied upon by the first respondent which was marked as Ex.R1 containing the list of coded employers.

7. A perusal of the records reveal that no such details with regard to the details of the company and code of the employers were shown in the petition filed by the first respondent or in the reply given to the show cause notice issued by the ESI Corporation. In the absence of any such proof filing the present appeal seeking to set aside the order passed by the Labour Court is unsustainable. Though the Labour Court in E.I.O.P.No.391 of 2001 passed the order on 24.11.2009, the appellant has chosen to challenge the same only in the year 2021. Therefore, the delay in the filing of the appeal is fatal.



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8. However, in order to give a quietus to the *lis* and as the first respondent is ready to pay the entire amount to the tune of Rs.3,60,341/- as demanded by the ESI Corporation, in the interest of justice, this Court directs the first respondent / Company to pay the aforesaid amount of Rs.3,60,341/-, within a period of two (2) weeks from the date of receipt of a copy of this order and upon receipt of such payment, the appellant is directed to close the file. The 45A order passed by the appellant Corporation is set aside and the appeal is allowed in the above terms. No costs.

14.12.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. The presiding officer, Principal Labour Court, Chennai
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J

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