



C.M.A(MD)No.447 of 2010

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.447 of 2010

and

M.P(MD)No.1 of 2010

M/s.Pharm Products (P) Ltd.,
Represented by its Managing Director,
Medical College Road,
Thanjavur-613 007.

... Appellant/Petitioner

Vs.

Regional Deputy Director,
Employees State Insurance Corporation,
143, Sterling Road,
Chennai-600 034.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of Employees State Insurance Act, against the order of the Employees State Insurance Court (Principal District Court), Thanjavur, dated 04.12.2009 in the case E.S.I.O.P.No.13 of 2005.

For Appellant : Mr.C.Sankar Prakash

For Respondent : Mr.N.Dilipkumar



C.M.A(MD)No.447 of 2010

JUDGMENT

WEB COPY

The present appeal has been filed by the employer challenging the dismissal of E.S.I.O.P.No.13 of 2005 confirming the order passed by the authorities for recovery of interest amount.

2. Admittedly, the appellant establishment is covered under E.S.I Act. On 09.07.1997, the corporation has issued an order under Section 45-A demanding a contribution of Rs.1,60,222/- for the period covering April 1991 – March 1994. This order was challenged by the employer in E.S.I.O.P.No.46 of 1997. Pending E.S.I.O.P, the Labour Court had directed the employer to deposit 50% of the contribution amount. Accordingly, the employer had deposited Rs.80,111/- on 01.08.1997. After enquiry, 45-A order was set aside by the E.S.I Court on 24.02.2003 and the matter was remitted back to the E.S.I corporation.

3. After remand, the E.S.I corporation has conducted an enquiry and a final order was passed on 13.09.2004 fixing the quantum of contribution at Rs.37,646/- and the said amount was remitted by the employer on 14.07.2004 even prior to the order under Section 45-A of the Act.



C.M.A(MD)No.447 of 2010

WEB COPY

4. Thereafter, the Corporation has initiated proceedings to recover the interest amount to a tune of about Rs.47,465/-. This order was challenged by the employer in E.S.I.O.P.No.13 of 2005. The Labour Court after considering the entire evidence on record, has arrived at a finding that since the employer has not deposited the contribution amount within 21 days from the due date, the corporation is entitled to levy interest for the said amount. With the said finding, the E.S.I.O.P. was dismissed by the Labour Court. Challenging the same, the present appeal has been filed by the employer.

5. According to the learned counsel appearing for the appellant/employer, originally a contribution was demanded at Rs.1,60,222/-. However, after remand, it was reduced to Rs.37,646/-. In fact, the employer had already deposited a sum of Rs.80,111/- pending E.S.I.O.P. Therefore, the employer cannot be construed to have committed default or delay in payment of the contribution amount. He further contended that even before passing of the second 45-A order, the employer has remitted the amount. Therefore, there is no delay or default on the part of the employer. Hence, the question of invoking Section 35



C.M.A(MD)No.447 of 2010

(A) of the Act for levying interest would not arise. However, the Labour Court has not properly appreciated the facts and had dismissed the petition. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the respondent corporation had contended that though the employer had deposited a sum of Rs.80,111/- pending E.S.I.O.P, the said deposit was made in the Court and not with the E.S.I corporation. The said amount was also withdrawn by him after the disposal of E.S.I.O.P.No.46 of 1997. Therefore, for the first time, the contribution amount was deposited only on 14.07.2004. In view of the said delay, the corporation is entitled to levy interest under Section 39(5) of the Act.

7. I have carefully considered the submissions made on either side.

8. The primary contention on the side of the appellant employer is that he had deposited more than the amount demanded under 45(A) order in view of the interim orders passed by the Labour Court in E.S.I.O.P.No. 46 of 1997, Therefore, according to him, the question of levying interest for the default or delay in payment of the said contribution amount would



C.M.A(MD)No.447 of 2010

not arise. It could be seen from the records that the employer had deposited a sum of Rs.80,111/- on 01.08.1997. However, the said deposit has been made in the Court and he had withdrawn the same after disposal of E.S.I.O.P. The amount was not deposited to the E.S.I corporation. Finally, after remand, a second 45(A) proceedings were initiated and pending and only during that period, the employer has chosen to deposit a sum of Rs.37,646/- on 14.07.2004. Therefore, the contention of the employer that had paid more amount than the amount demanded by the E.S.I corporation is not legally sustainable. Therefore, the question of law raised by the appellant are answered against the appellant. The appeal lacks merits.

9. Hence, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

gbg



C.M.A(MD)No.447 of 2010

To

WEB COPY

- 1.The E.S.I Court (Principal District Court),
Thanjavur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.447 of 2010

R.VIJAYAKUMAR,J.

gbg

Judgment made in
C.M.A(MD)No.447 of 2010

21.06.2023