BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.504 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-

The Assistant Director,
Employees State Insurance Corporation,
143, Sterling Road,
Chennai – 600 034. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of Employee State Insurance Act, 1948, 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.52 of 2005.

For Appellant : Mr.C.Sankar Prakash

For Respondent : Mr.N.Dilipkumar

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the employer challenging the order passed by the Employees State Insurance Corporation, imposing penalty under Section 85-B of the E.S.I. Act for a sum of Rs.5,989/- (Rupees Five Thousand Nine Hundred and Eighty Nine only).

2. Originally, the employer was issued with a show cause notice on 31.01.1996 and thereafter, Form C-18 notice was issued on 18.06.1997 demanding a sum of Rs.22,096/- (Rupees Twenty Two Thousand and Ninety Six only) as contribution. Challenging the said C-18 notice, the employer had filed E.S.I.O.P.No.38 of 1997 before the Labour Court/E.S.I. Court, Thanjavur on 10.07.1997. Pending E.S.I.O.P, the employer had remitted a sum of Rs.11,500/- (Rupees Eleven Thousand and Five Hundred only) to the Court deposit. Thereafter, E.S.I.O.P was allowed and remitted the matter back to the E.S.I. Corporation, by an order, dated 24.02.2003.

3. After remand, the authorities conducted an enquiry under Section 45-A of the E.S.I Act. Pending enquiry, the employer had deposited a sum of Rs.9,384/- (Rupees Nine Thousand Three Hundred and Eighty Four only)

before the authorities. The said amount was accepted by the authorities and order under Section 45-A of the E.S.I.Act was passed on 26.05.2004. Therefore, it is clear that neither the coverage nor the quantum of contribution are in dispute.

4. The E.S.I Corporation had issued a show cause notice for initiating the proceedings under Section 85-B of the E.S.I.Act, demanding a sum of Rs.5,989/- (Rupees Five Thousand Nine Hundred and Eighty Nine only) for the belated payment of the contribution. The said sum was arrived at for the belated payment of the contribution for the period between April 1993 to March 1994. According to the Corporation, the payment of the contribution was due on 21.02.1996 and the employer had approached the E.S.I. Court on 10.07.1997. Between the said period, there was no litigation pending and therefore, the employer is liable to pay damages. The E.S.I.O.P filed by the employer, was disposed on 24.02.2003. Thereafter, the employer had deposited the amount only on 07.05.2004. Therefore, for the period between 08.03.2003 to 04.05.2004, the Corporation had demanded and imposed the damages. The said order was challenged by the employer before the E.S.I. Court.

5. The E.S.I. Court, after considering the oral and documentary evidence, has arrived at a finding that the amount claimed as damages under Section 85-B of the E.S.I. Act is legal and it is in accordance with law and proceeded to dismiss the said petition. Challenging the same, the present appeal has been filed by the employer raising following the substantial questions of law:

> 1. Whether the respondent is bound to levy damages for all the cases of late-remittance of E.S.I. Contribution amount?.
>
> 2. Whether the appellant is liable to pay the maximum amount of damages irrespective of the reason for the late remittance of the contribution amount?
>
> 3. Whether presence of *mens rea* is a vital factor to decide the quantum of damages?.
>
> 4. Whether the learned Judge was right in passing a non-speaking order?.

6. According to the learned counsel appearing for the appellant/ employer, under Section 45-A of the E.S.I Act, order was passed on 26.05.2004 and even before passing of the said order, the employer had deposited the amount on 07.05.2004. Therefore, the question of initiating

proceedings under Section 85-B of the E.S.I.Act, does not arise. That apart, unless the Corporation establishes that there was m*ens rea* on the part of the employer in belatedly making payment of the contribution, the order imposing penalty is not legally sustainable. Hence, he prayed for allowing the appeal.

7. Per contra, the learned counsel appearing for the respondent/E.S.I. Corporation had contended that the period, during which, litigation was pending has been excluded. The damages have been calculated only for the pre-litigation and post-litigation period. The claim for contribution and the delay in payment of contribution being a civil liability, the question of proving m*ens rea* by the Corporation does not arise. As and when the amount becomes due as per the statute, the employer is expected to deposit the contribution amount without waiting for any adjudication by the authorities under Section 45-A of the E.S.I Act. Hence, he prayed for sustaining the order passed by the E.S.I. Court.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

9. The coverage of the appellant establishment is not in dispute. The establishment has accepted the order passed under Section 45-A of the E.S.I.Act and has also deposited the amount. The only issue that arises for consideration is whether the Corporation can levy damages and there are any mitigating circumstances in favour of the employer either to waive the damages or to reduce the damages.

10. Form C-18 notice was issued by the Corporation has been challenged by the employer in E.S.I.O.P.No.38 of 2019 on 10.07.1997. However, the due date for payment of contribution is 21.02.1996. Therefore, the period between 21.02.1996 and 10.07.1997 has been taken into consideration for imposition of penalty. E.S.I.O.P.No.38 of 1997 was disposed of on 24.02.2003. Thereafter, the amount was deposited only on 07.05.2004. The delay in the post-litigation period has also been taken into consideration for imposition of penalty.

11. Therefore, this Court does not find that there is an error or infirmity either in the order passed by the Corporation or by the E.S.I.Court, Thanjavur. All the substantial questions of law are answered against the appellant.

12. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

16.06.2023

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

To
1. The Employees State Insurance Court
(Principal District Court), Thanjavur,

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

ebsi

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