BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.09.2022

Delivered On : 30.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.589 of 2022

Sri Lakshmi Narayan Sizing Mills
Represented Through its Proprietrix
S. P. Poornima, Shed No. 45,
Sidco Industrial Estate,
Kappalur, Madurai - 625 008. .. Appellant/petitioner

Vs.

Employees State Insurance Corporation,
Represented by its Assistant Director,
K.K. Nagar, Madurai. .. Respondent / Respondent

Prayer: This Civil Miscellaneous Petition filed under Section 82(2) of Employee State Insurance Act, to allow this Civil Miscellaneous Appeal setting aside the order, dated 10/01/2022 made in E.S.I.O.P. 61/2010, on the file of ESI Judge, ESI Court (Labour Court), Madurai.

For Appellant : Mr.R.G.Shankar Ganesh

For Respondent : Mr.C.Karthik

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 10.01.2022 made in E.S.I.O.P. 61 of 2010, on the file of ESI Judge, ESI Court (Labour Court) ,Madurai.. The appellant herein is the petitioner and the respondent herein is the respondent in the original Petition.

2. Brief substance of the petition, in E.S.I.O.P. 61 of 2010, is as follows:-

The petitioner's establishment was engaged in sizing of yarn. The petitioner entered into a lease agreement on 20.05.2009 and commenced production from June-2009 onwards. The petitioner never employed more than 9 employees. The provisions of the E.S.I. Act is not applicable to the petitioner. The respondent officials visited the establishment on 26.04.2010 and directed the petitioner to remit a sum of Rs.35,244/-, and then the respondent issued Form C-18, on 12.05.2010, demanding contribution of Rs.35,244/-. The petitioner sent a reply on 24.05.2010 stating that they have employed less than

10 persons and the provision of E.S.I Act is not applicable to the establishment. Then, the respondent issued an order under Section 45(A) of E.S.I. Act, dated 17.06.2010, claiming contribution for the year 200-2001, 2002-2003, 2006-2007, 6/2009 to 3/2010. The petitioner commenced the production only during the month of June 2009 and prayed the order to be set aside.

3. Brief substance of the counter filed by the respondent, in E.S.I.O.P. 61 of 2010, is as follows:

The petitioner was running a Mill, which was covered under the E.S.I. Act, from 01.04.1998. Since the Principal employer is covered under the Act, the leasee also is liable to pay the contribution, jointly or severally. Based on the inspection conducted on 26.04.2010, it was found that the petitioner failed to remit the contribution of Rs.9,968/- for the period June-2009 to March-2010 and a sum of Rs.54,220/- towards contribution for omitted wages for the period from April-1998 to March -2010 and from April-2000 to March – 2009. As there was no compliance by the petitioner, notice in Form C-18 was issued and the reply sent by the petitioner was not acceptable. The petitioner unit was a covered and existing unit and hence, both the principal and leasee are liable to pay contribution and the order under Section 45(A) of E.S.I. Act is legally sustainable.

4. On the side of the petitioner, no witness was examined and 8 documents were marked. On the side of the respondent, 1 witness was examined and 4 documents were marked. After considering both sides, the E.S.I Court, dismissed the petition.

5. Against the order of dismissal, the appellant has filed this Appeal on the following grounds:-

The E.S.I. Court failed to consider that the establishment is situated at Uchapatti village and the provisions of the Act come into force only from 01.10.2007. The inspection was taken place on 12.05.2010 and the amount was calculated from the year 2000-2001, 2002-2003. The E.S.I Court failed to observe that as per Section 45(A)(1) of the Act, contribution cannot be determined beyond five years from the date on which the contribution shall become payable. The order for claiming contribution, from 2000-2001, 2002-2003, dated 17.06.2010, is beyond a period of 5 years. The E.S.I. Court failed to consider that M/s. Sundararaja Mills is a separate entity. The E.S.I court is wrong in dismissing the petition on the ground that both the units are running under the same roof.

6. On the above grounds, this Court, by its order dated 27.06.2012, has admitted this appeal on the following substantial questions of law:-

(a) Whether the E.S.I. Authority i.e. the respondent has the power to apply the provisions of the E.S.I. Act to Utchappatti Village, when the same has not been brought under the preview of the Act?

(b) Whether the respondent is right in making demand for contribution beyond a period of 5 years contrary to Section 82 of E.S.I. Act?

Issue No.(a):

7. On the side of the appellant, it is stated that the order for claiming contribution, from 2000-2001, 2002-2003, dated 17.06.2010, is beyond a period of 5 years. The E.S.I. Court failed to consider that M/s. Sundararaja Mills is a separate entity. On the side of the appellant, it is stated that the Unit is running in Uchapatti village, wherein, the E.S.I. Act was not in force till 01.10.2010, but, the inspection was conducted on 12.05.2010 and the contribution was fixed from the year 2000. On the date of inspection, Uchapatti village was not covered under the Act. On the side of the appellant, it is further stated that an attachment order was made and an order of stay was also in force.

8. On the side of the respondent, it is stated that through physical inspection, it was found that the employer was not paying contribution from the year 2000 onwards. When the appellant was called for personal enquiry, he failed to appear and he failed to submit any reply. From 01.04.1998 onwards, the establishment is covered under the E.S.I. Act. Husband and wife were doing business, within the same premises under the same roof. M/s. Sundararaja Mills was run by the husband and M/s. Lakshmi Narayana Mills was run by the wife. M/s. Sundararaja Mills was within the coverage area and the question of coverage was not raised in the main petition.

9. The respondent has not chosen to file any document to show that the establishment was not situated in Uchapatti village and that was covered under the Act from the year 1998 onwards. Hence, this question of law raised by the appellant is sustainable.

Issue No.(b):

10. On the side of the appellant, it is stated that the respondent is not entitled to claim contribution beyond a period of 5 years under Section 82 of E.S.I.Act. On the side of the appellant, a judgment of this Court, in C.M.A.

(MD)No.793 of 2017 (M/s.ICD's rep. by its Partners, I.C.M.Jahira Begum V. The Deputy Director, Sub Regional Office), dated 29.11.2017 is cited, wherein, it is stated as follows:-

> *" 9.In the present case, the order under Section 45A of the Employees' State Insurance Act came to be passed only on 08.04.2013. The said order called upon the appellants to pay contribution for the period from 14.08.1997 to 31.10.2012. By Act 18 of 2010, Section 45A of the Employees' State Insurance Act has been amended and it states that no order under Section 45A of the Act shall passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.*
>
> *10.Therefore, the respondent/Corporation could not have called upon the appellants to pay the contribution for the period prior to 07.04.2008. I, therefore, answer the second substantial question of law raised in this appeal in favour of the appellants. The next question is whether the matter should be remitted to the file of the respondent/Corporation for fresh determination in accordance with law. It is the contention of the appellants that they are running altogether a new establishment. But according to the respondent/ corporation, it is old wine in a new bottle. In other words, the very same establishment continues to be run and that therefore the provision of the Act would continue to apply."*

11. As per the Act 18 of 2010, Section 45 (A) of E.S.I. Act has been amended as follows:-

> *"9. Amendment of Section 45-A.- In Section 45-A of the Principal Act, in sub-Section (1),-*
>
> *(i) for the word "Inspector", the words "Social Security Officer" shall be substituted;*
>
> *(ii) after the proviso, the following proviso shall be inserted, namely:-*
>
> *"Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable "*

12. It is seen that the respondent has issued Form C-18 for the period from 2000 onwards. The date of inspection was in the year 2010 and hence, C-18 was issued on 17.06.2010. Hence, Form C-18 is not valid for the period beyond 5 years. Hence, the claim beyond 17.06.2005, is not sustainable.

13. A perusal of the order under Section 45 of E.S.I. Act, dated 17.06.2010 reveals that a total sum of Rs.35,242/- was claimed for the period 2000-2001, 2002-2003, 2006-2007 and from June – 2009 to March-2010. The

calculation for each year was not particularly stated in the order. In the inspection report, dated 11.05.2010, only 9 employees were being mentioned.

14. Form C-18 claim was issued from the year – 2000 onwards. What are all the source of the records; what are the documents perused by the inspector and what are the particulars he found in the records were not particularly mentioned in the Inspection report. It was not stated whether the inspector verified the wage register or any other register to find out the number of employees for the particular period. It is stated that the inspector perused the records only from the year June-2009 till March-2010,. Hence, it is decided that the question of law raised by the appellant is sustainable.

15. In view of the above discussion, the order, dated 10.01.2022, made in E.S.I.O.P. 61 of 2010, on the file of E.S.I. Judge, ESI Court (Labour Court), Madurai, is hereby set aside. This Appeal is allowed. No costs.

30.01.2023

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

R. THARANI, J.

Ls

To

1.The ESI Judge, ESI Court
(Labour Court),
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.589 of 2022

30.01.2023