BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1182 of 2022

Employees State Insurance Corporation,
Sub Regional Office,
2nd Main Road, K.K.Nagar, Madurai.
Rep., by its Director ...Appellant/ Respondent

Vs.,

M/s.Shri Ramalinga Mills Ltd., 'A' Unit,
212, Ramasamy Nagar,
Aruppukkottai 626 159
rep., by its Chairman ... Respondent/Petitioner

PRAYER: This Civil Miscellaneous Appeal is filed under Section 82(2) of the ESI Act, 1948, to set aside the fair and decreetal order passed in ESIOP.No.84 of 2011 on the file of ESI Court (Labour Court), Madurai dated 16.03.2022.

For Appellant : Mr.R.Ravikumar

For Respondents : Mr.K.Hemakarthikeyan

JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking to set aside the fair and decreetal order passed in ESIOP.No.84 of 2011 on the file of ESI Court (Labour Court), Madurai, dated 16.03.2022.

2. The facts in brief:

The respondent herein is the spinning mill situated in Aruppukottai. The petitioner has issued notice to the respondent in Form C-18(interest) dated 08.07.2011 demanding interest of Rs.3,84,405/- on the belated contribution payment on omitted wages for a period from April-2006 to March-2010, which is according to the respondent, without affording any opportunity as per the principles of natural justice in spite of request dated 08.08.20110. Originally, an inspection was conducted on the respondent mill on 06.05.2011 and found that there was omitted wages to the tune of Rs.1,95,13,634/- and the respondent was directed to pay a sum of Rs.12,68,387 at 6.5% towards omitted wages immediately. Pursuant to such demand, the respondent has paid contribution on 27.05.2011. After that, the appellant has issued notice demanding interest for the delayed contribution from the year April 2006-March 2010. Challenging the said demand notice, ESIOP No.84 of 2011 has been filed before the Labour Court.

3. The Labour Court has relied on the ESIC Revenue Manual of the appellant/ESI Corporation and held that since the manual contemplated 21 days grace period for claiming interest after issuance of demand letter/C-18 notice from the Regional/Sub Regional Office and the respondent has already paid contribution before issuance of C-18 notice, the interest cannot be claimed by the appellant/ESI Corporation. The Labour Court allowed the petition filed by the respondent by setting aside the impugned order passed by the appellant/ESI Corporation. Challenging the same, the present appeal came to be filed by ESI Corporation and following substantial questions of law are also raised:

> *"(i) Whether the Labour Court went wrong in understanding the factual matrix as the dispute is with respect to payment of interest on omitted wages for the period April 2006 to March 2010 and not with respect to any delay in paying the omitted amount itself as the same was paid in time?*
>
> *(ii) Whether the Labour Court is right in concluding that the soc alled delayed interest is paid in time and well before the issuance of the C-18(interest) the impugned notice Ex-R3 whereas the dispute is with regard to non-payment of interest and not with regard to the principal amount i,e., the omitted wages for the period from April 2006 to March 2010? "*

4. The learned counsel for the appellant/ESI Corporation submitted that the payment of interest is statutorily recognized and it is automatic for the delayed contribution. In the event of any delay in contribution, the interest has to be levied. According to him, from April-2006 to March-2010, the respondent have not paid contribution and it has been detected during inspection. Accordingly, the contribution to the tune of Rs.12,68,387/- has arrived. Though the said amount has been paid, as the contribution has not been paid in time, interest has been calculated, whereas the trial Court has simply relied upon internal manual, which has no statutory backing, has set aside the demand notice. Hence, he prayed for allowing the appeal.

5. The learned counsel appearing for the respondent would submit that the interest contemplated under the Act is only for regular contribution for the regular employees, whereas the contribution claimed by the appellant with regard to omitted wages is not sustainable. According to him, the guidelines of the manual of the appellant itself clearly indicated that 21 days grace period is mandatory, after issuance of the notice in Form C-18 and prior to such notice, the entire contribution has already been paid by the respondent. Therefore, the

question of paying interest for the delayed contribution does not arise in this case. At any event, it is the contention of the learned counsel for the respondent that despite the personal hearing is sought to explain the stand of the respondent, no personal hearing and no opportunity was given to the respondent.

6. Considering the above, this Court come to a conclusion that this appeal has to be allowed and the matter may be remitted back in order to give personal hearing to the respondent. On perusal of the entire materials, admittedly, the inspection was carried out by the appellant on 06.05.2011 and found that the total omitted wages to the tune of Rs.1,95,13,634/- and arrived contribution to be paid by the respondent to the tune of Rs.12,68,387/- at 6.5% on total omitted wages and directed the respondent to remit the contribution immediately. It is not in dispute that the said amount has been paid by the respondent on 27.05.2011. Thereafter, the appellant had demanded interest for the delayed contribution to the tune of Rs.3,84,405/-. The same was put to challenge before the Labour Court. The Labour Court relied on Ex.P.5, ESI Revenue Manual L17.10 and set aside the order. It is necessary to extract the guidelines in internal manual, which was filed as Ex.P.5 before the Courts below. The same reads as follows:

"L17.10 Interest on left-out wages/omitted wages reported by the SSO/TIO:

Interest on left-out wages noticed and reported by the Social Security Officer or Test Inspecting Officer where the number of employees, employee-wise details of wages paid and period of engagement of such employees was not available, is to be claimed after allowing a grace period of 21 days from the date of demand letter/C-18 notice from the Regional /Sub-Regional Office."

7. On perusal of the above Manual, it is very clear that there is no waiver of interest and what is contemplated that grace period of 21 days is granted from the date of demand letter/C-18 from the Regional/Sub-Regional Office. Therefore, merely because of internal guidelines, which has no statutory backing providing 21 days grace period from the date of demand letter, it cannot be construed to mean that their interest itself for delayed contribution cannot be claimed. It is relevant to note that the payment of interest for delayed contribution is statutory interest for delayed contribution and it is very much provided in the regulation. Regulation 31 stipulates the time for payment of contribution by an employer within 21 of the last days of the calendar month in which the contribution falls due. Regulation 31A stipulates that the employer, who failed to pay contribution within a period specified in Regulation 31, shall be liable to pay simple interest at

the rage of 12% per annum in respect of each payment of default on delay in payment of contribution. On perusal of the above two Regulations, it is mandatory on the part of the employer to pay the interest on the delayed contribution. Though the ledgers and others have been maintained in the respondent office as if the amount has been spent installing machinery, this Court is of the view that without assistance of any employee, such work could not have been possible. Therefore, the respondent cannot take a contention that they are not liable to pay the contribution. When the respondent have engaged employees and shown different amounts as if it is an omitted wages, that cannot be determinative factor to hold that the interest cannot be claimed at all. In such view of the matter, substantial questions of law are answered and the order of the trial Court is set aside and the matter is remanded back to the authorities concerned to pass fresh order after giving personal hearing to the respondent.

8. With the above observations, this Civil Miscellaneous Appeal is disposed of. No costs.

15.03.2023

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

To

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

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

N.SATHISH KUMAR, J.

Rmk

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