BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2023

PRONOUNCED ON : 31.03.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.460 of 2016

Vidyasagar Textiles
(A Division of Palani Andavar Cotton and
Synthetic Spinners Ltd.,)
S.F.1639/1A, Vedasandur 624 710
Dindigul District ... Appellant

vs.

1.The Deputy Director
Sub Regional Office (Madurai)
Employees State Insurance Corporation
"Panchdeep Bhavan, 4th Main Road
K.K.Nagar
Madurai 625 020

2.The Recovery Officer
Office of the Recovery Officer
Employees State Insurance Corporation
4th Main Road, K.K.Nagar
Madurai -20

3.M/s.Cheran Spinning Mills (P) Limited
S.F.1639/1A, Sevankottai (P.O)
Vedasandur
Dindigul District ....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I.Act, to set aside the order of the Employees State Insurance Court (Labour Court), Madurai in E.S.I.O.P.No.85 of 2005 dated 27.08.2015 and allow the appeal.

For Appellant	: Mr.V.O.S.Kalaiselvam
For R1 & R2	: Mr.P.Ganapathisamy
For R3	: No appearance

J U D G M E N T

The present appeal has been filed by the employer challenging the dismissal of E.S.I.O.P.No.85 of 2005 on the file of the E.S.I.Court, Madurai confirming the order of E.S.I.Corporation passed under Section 45-A of the E.S.I.Act.

2.The petitioner is a Spinning Mill and they commenced their production during November 1989. The E.S.I.Corporation had addressed a letter to the management on 29.01.2001 informing the employer that the area is covered under the E.S.I.Act with effect from 01.11.1999. Immediately, the petitioner mill started paying its contribution under the E.S.I.Act. The E.S.I.Corporation passed an order under Section 45-A of the Act on 08.05.2002 without affording any opportunity to the employer claiming contribution for the period between November 1999 to August 2000 for a sum of Rs.3,62,505/-. The said order was challenged by the employer in E.S.I.O.P.No.48 of 2002 and the same was dismissed by the Labour Court, Madurai on 24.02.2014. Challenging the same, the employer had filed CMA.No.886 of 2014. The said appeal was allowed on 06.01.2015, directing the employer to implead the auction purchaser and proceed further before the E.S.I.Court, Madurai. Thereafter, the E.S.I.O.P.was reheared and it was again dismissed on 27.08.2015. Challenging the same, the present appeal has been filed by the employer.

3.According to the learned counsel for the appellant, the E.S.I.Corporation had addressed a letter to the employer on 29.01.2001 imposing retrospective coverage on the Mill with effect from 01.11.1999. The Corporation has no legal right to implement the Act with retrospective operation. The learned counsel for appellant had further contended that the Mill had borrowed amount from the Bank and it was subjected to SARFAESI proceedings. In the SARFAESI proceedings, the mill was sold on 04.04.2011. Therefore, after sale, the auction purchaser is also equally liable to pay contribution amount as contemplated under Section 93-A of the E.S.I.Act.

4.The learned counsel for the appellant had further contended that the Mill was declared as a sick industry by the Board of Industrial and Financial Reconstruction (BIFR) in the year 2004 and therefore, being a sick industry, it is completely exempted from the purview of E.S.I.Act. He had further contended that these legal submissions were not properly appreciated by the E.S.I.Court and hence, he prayed for allowing the appeal.

5.Per contra, the learned counsel appearing for the respondents/corporations had contended that no document has been placed either before the E.S.I.Corporation or before the E.S.I.Court relating to BIFR proceedings. Therefore, the said pleadings without any document whatsoever cannot be taken into consideration. He had further contended that even assuming that the employer has transferred the establishment in favour of a third party, as per Section 93-A of the E.S.I.Act, both of them are liable to be proceeded for recovering the contribution amount. Therefore, the contention of the employer that the

Mill has been sold away in the year 2011 and they are not liable for the payment of the E.S.I.Corporation is not legally sustainable. Hence, he prayed for sustaining the order passed by the E.S.I.Court.

6.I have considered the submissions made on either side and perused the materials available on record.

7.By way of a notification, the Government of India had extended the E.S.I.Act to Vedasandhur with effect from 01.11.1999. The said notification has been brought to the notice of the employer by way of a letter dated 29.01.2001 by the E.S.I.Corporation. Since the applicability of the Act is extended to Vedasandhur area, the employer is liable to pay the contribution. There is no necessity for him to await for any reminder letter from the E.S.I.Corporation. Therefore, the letter dated 29.01.2001 is only a reminder and the contention of the employer that they attempted to fix the liability with retrospective effect from 01.11.1999 is not legally sustainable. Therefore, in view of the statutory provision, the employer is liable to pay contribution from 01.11.1999 till 31.08.2000. Though the learned counsel for the appellant had contended that the appellant mill has been declared to be a sick Unit by BIFR, no document has been placed either before the Corporation or before the E.S.I.Court to prove the same. Therefore, this Court is not inclined to accept the said contention of the employer.

8.The appellant/employer had further contended that in SARFAESI proceedings, the mill premises has been sold to the third respondent in the appeal in the year 2011 itself. Therefore, they are not liable to pay any contribution after the premises were sold away under the SARFAESI Act. The learned counsel for the appellant had also relied upon the provisions of SARFAESI Act to contend that the statutory charges over the property would still continue and the purchaser would also be liable to pay the contribution amount.

9.As per Section 93-A of the E.S.I.Act, whenever a transfer of an establishment takes place, the Corporation is at liberty to proceed either against the transferor or against the transferee or against both of them. Therefore, the contention of the learned counsel for the employer that the Corporation has to proceed only as against the purchaser under the SARFAESI Act is not legally sustainable. It is pertinent to point out that the contribution relates to the period between November 1999 and August 2000. During the said period the establishment was under the management of the appellant.

10.Therefore, viewed from any angle, all the contentions raised by the appellant are not sustainable in the eye of law and all the substantial questions of law are answered as against the appellant. The appeal lacks merit and the same stands dismissed. No costs.

31.03.2023

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

1. The Judge
E.S.I.Court (Labour Court)
Madurai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.460 of 2016

31.03.2023