



C.M.A(MD)No.598 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.598 of 2016

The Joint Director,
Sub-Regional Office,
Represented by its Director,
E.S.I.Corporation, Madurai.

... Appellant/Respondent

Vs.

P.S.S.Exports,
Represented through one of its Partner
S.Anbu Devi.

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of the E.S.I Act, to set aside the order, dated 20.03.2014 passed by the E.S.I Court (Labour Court), Madurai in E.S.I.O.P.No.23 of 2004, uphold the claiming of interest and issue of the Prohibitory Order, dated 19.05.2004 of the E.S.I Corporation and allow this civil miscellaneous appeal.

For Appellant : Mr.P.Ganapathisamy

For Respondent : No Appearance



C.M.A(MD)No.598 of 2016

WEB COPY

JUDGEMENT

The present appeal has been filed by the E.S.I. Corporation challenging an order passed by the E.S.I Court which has set aside the order of the E.S.I corporation demanding interest upon the belated payment of the contribution by the employer.

2. Heard the learned counsel appearing for the appellant. Despite the name being printed in the cause list, the learned counsel for the respondent has not appeared on the last two occasions. Therefore, this Court proceeds to pass orders after hearing the learned counsel appearing for the appellant.

3. There is no dispute that the respondent is covered under the E.S.I Act. For the belated payment of contribution made by the employer, the corporation has issued two demand notices on 07.11.2000 for the period covering 25.05.1985 to 31.03.1986 and 01.04.1986 to 31.03.1989 for payment of interest for the belated payment of the contribution amount. Thereafter, a notice was issued by the corporation on 23.02.2004 calling upon the employer to appear for an enquiry on 05.03.2004. Since



C.M.A(MD)No.598 of 2016

the employer had not appeared for an enquiry, a prohibitory order was passed on 19.05.2004 by the E.S.I corporation for a sum of Rs.13,810/- (Rupees Thirteen Thousand Eight Hundred and Ten only).

4. The said enquiry notice and the prohibitory order were challenged by the employer in E.S.I.O.P.No.23 of 2004 before the Labour Court, Madurai.

5. The primary contention of the employer was that the demand for interest has been made only in the year 2000 for the period covering between 1985 and 1989. Therefore, the said claim is belated one and hit by delay and laches. The employer had relied upon the judgment of the Hon'ble Supreme Court and our High Court which were delivered while dealing with an order passed by the corporation under Section 45-A of the E.S.I Act. The learned Labour Judge had accepted the said contentions and relying upon the said judgments, had allowed the petition of the employer on the ground that the claim is hit by delay and laches. The said order is under challenge in the present appeal.



C.M.A(MD)No.598 of 2016

6. According to the learned counsel appearing for the appellant, the Hon'ble Supreme Court and our High Court have set aside the demand for contribution which were made belatedly and quashed the orders passed under Section 45-A of the E.S.I Act. However, the said orders of the Hon'ble Supreme Court and High Court cannot be relied upon where the demand is being made for payment of interest due to belated payment of the contribution amount. The learned counsel appearing for the E.S.I corporation relied upon the judgment of the Hon'ble Supreme Court reported in **2007 (1) SCC 584 (E.S.I. Corporation Vs. C.C.Santhakumar)**. The Hon'ble Supreme Court in Paragraph No.23 has categorically held that there no limitation is provided in chapter VII, which deals with the imposition of penalty or levy of damages upon failure to pay contributions. Therefore, it is clear that the corporation is entitled to make a demand for payment of interest on the belated deposit of contribution amount and there is no limitation for the same. The limitation prescribed under Section 45-A of the E.S.I Act is only for the purpose of determination of contribution. Once contribution is determined and the contribution is also paid, but belatedly, the power of the corporation to recover the interest or the damages is not subjected to any limitation period under the Act.



C.M.A(MD)No.598 of 2016

Therefore, the tribunal was not right in relying upon the judgments of the Hon'ble Supreme Court and the High Court that were passed under Section 45-A of the E.S.I Act.

7. In view of the above said facts, the order of the E.S.I Court allowing the application of the employer on the ground that it is hit by delay and latches is not sustainable in law. Hence, the Civil Miscellaneous Appeal stands allowed. No costs.

16.03.2023

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

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To

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



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C.M.A(MD)No.598 of 2016

R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.598 of 2016

16.03.2023