



CMA(MD).No.1326 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 16.03.2023

PRONOUNCED ON : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1326 of 2015

Employees' State Insurance Corporation
Represented by its Deputy Director
Sub Regional Office
Municipal Shopping Complex
Salai Street
Sindhupoonthurai
Tirunelveli 627 001

Now at Panchdeep Bhavan
ESIC Complex
Vannarapettai
Tirunelveli

... Appellant

VS.

M/s.Sree Visalam Chit Fund Ltd.,
Represented by its Director
A.R.Umapathy
having its Registered Office at
D.No.2-13-2, Kattalai Street
Tirunelveli Town
Tirunelveli District

...Respondent



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PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act, 1948, to set aside the decree and judgment of ESI Court (Labour Court) Tirunelveli passed in E.S.I.O.P.No.28 of 2014 dated 08.09.2015 and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.P.Ganapathysamy

For Respondent : Mrs.AL.Gandhimathi
Senior Counsel
For Mr.C.Mahadevan

JUDGMENT

The above appeal has been filed by the E.S.I Corporation challenging the order of E.S.I.Court reversing the order passed by the E.S.I.Corporation under Section 45-A of the Act on 21.08.2012.

Factual Matrix

2.The respondents is a Chit Fund Company and they are originally covered under E.S.I Act with effect from 16.01.1977. The coverage order was challenged by the said establishment by filing W.P.No.6380 of 1980 before the Madras High Court and the same was dismissed on 06.04.1987. The establishment had filed S.L.P.No.12697 of 1987 and the same was dismissed as withdrawn on 14.10.1993. Therefore, the coverage of the establishment had become final.



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3.The Tuticorin Branch of the respondent establishment was allotted a different code number and the said branch challenged the same in E.S.I.O.P.No.10 of 2005 before the E.S.I Court, Tirunelveli and the same was dismissed on 01.07.2011. As against the said order, the establishment had filed C.M.A.(MD)No.1131 of 2011 before the Madurai Bench of Madras High Court and the same was dismissed by the High Court on 19.03.2012. The Tuticorin branch had filed Civil Appeal No.6212 of 2012 and the same was dismissed by the Hon'ble Supreme Court on 31.07.2014. Therefore, the coverage of the establishment was again reconfirmed by the Hon'ble Supreme Court.

4.Due to pendency of the litigation, demand notices were not raised by the Corporation. On 21.08.2012, a demand notice was issued for a period covering 01.02.1979 to 31.01.2007. After hearing the establishment, two independent orders were passed under Section 45-A of the E.S.I.Act. The order dated 31.06.2012 was passed under Section 45-A for demanding a sum of Rs.86,00,000/- covering the period between 01.02.2007 to 31.12.2011. The said order was not challenged by the establishment and it is admitted by both the parties that the order has been complied with.



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5. On 21.08.2012 another order was passed under Section 45-A of the E.S.I. Act demanding a sum of Rs.1,96,46,247/- covering the period between February 1979 to January 2007. The said order was challenged by the establishment by way of filing E.S.I.O.P.No.28 of 2014. The E.S.I. Court was pleased to allow the said petition on the ground that the demand has been raised belatedly and it is time barred. Challenging the said order, the present appeal has been filed by the E.S.I. Corporation.

6. Contentions of the learned counsel appearing for the Petitioner/ E.S.I. Corporation:

(i). The litigation relating to the coverage of the establishment was decided finally by the Hon'ble Supreme Court only on 31.07.2014. Therefore, due to pendency of litigation, proceedings could not be initiated for determination of the contribution. Therefore, the issuance of demand notice on 28.01.2012 or the order passed under Section 45-A on 21.08.2012 cannot be considered to be time barred.

(ii). The Tuticorin Branch of the establishment had obtained interim orders and therefore, the proceedings could not be initiated for determination of the compensation. Therefore, the period during which



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the interim order was operating as against E.S.I. Corporation should be excluded at the time of calculation of the limitation period.

(iii). The establishment was given many opportunities to substantiate their case. However, they have not come forward to produce the records. Therefore, the order of E.S.I. Corporation should not have been interfered by the E.S.I. Court.

(iv). The E.S.I. Court has not properly appreciated the amendment introduced to Section 45-A of the E.S.I. Act, introducing the period of limitation for initiating action for determination of the contribution. When Section 45-A of the E.S.I. Act was amended and a period of limitation was introduced, the litigation between the parties were pending. Therefore, the amendment is not applicable to the pending cases. The rights and liabilities that arise out of un-amended Section 45-A of the E.S.I. Act would continue to bind the parties and it is enforceable by the Corporation even after introduction of the amendment for the period prior to the date of amendment.

7. Therefore, the learned counsel for the appellant had prayed for setting aside the order of the E.S.I. Court and to allow the appeal.



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8. Contentions of the learned Senior Counsel appearing for the respondent are as follows:

(i).The dispute relating to the coverage of establishment was finally concluded by the Hon'ble Supreme Court on 14.10.1993. Thereafter, there was no dispute whatsoever with regard to the coverage of establishment under the E.S.I.Act.

(ii). The Tuticorin Branch had filed E.S.I.O.P only in the year 2005 challenging the allotment of separate code number to the said branch. In between 14.10.1993 and 2005, no legal proceedings were pending before any Court. However, the Corporation has not initiated any proceedings to determine the contribution during the said period.

(iii). The interim order granted in E.S.I.O.P No.10 of 2005, related only to the Tuticorin Branch which was allotted a different code number than that of the other establishments including the Head Office. Therefore, the said order in relation to the Tuticorin Branch with a different code number cannot be cited for the delay in initiating proceedings for determination of contribution.

(iv). The second proviso to Section 45-A of the Act providing for a limitation of 5 years was introduced with effect from 01.06.2010. As per



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the said second proviso, the Corporation has no power to pass any order determining the contribution in respect of the period beyond 5 years from the date on which the contribution shall become due.

(v).The present order under Section 45-A of the E.S.I. Act has been passed on 21.08.2012 covering the period between February 1979 to January 2007. Therefore, it is clearly barred by second proviso to Section 45-A. While introducing the period of limitation by way of Employees' State Insurance (Amendment) Act, 2010, no provision has been made to save the period of limitation with regard to the litigations that were pending on the said date. Therefore, the contention of the Corporation that the introduction of amendment in relation to the period of limitation would not affect the pending cases, is not legally sustainable. Therefore, the learned Senior Counsel had prayed for confirming the order passed by the E.S.I.Court.

9.I have considered the submissions made on either side and perused the orders of the E.S.I Court.

10.Admittedly, the respondent establishment is covered under E.S.I Act from 16.01.1977 onwards. The said establishment had challenged the coverage and the coverage order of the Corporation was



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confirmed by the Hon'ble Supreme Court in S.L.P.No.12697 of 1987 dated 14.10.1993. The Corporation had allotted the code number to the Head Office and also to all other branches of the establishments. After 14.10.1993, there was no legal impediment whatsoever for the corporation to initiate proceedings for determination or recovering the contribution under the E.S.I.Act.

11.The Corporation has cited initiation of legal proceedings by the Tuticorin Branch for the delay in initiating proceedings for determination of contribution. Admittedly, the Tuticorin Branch of the respondent establishment has been allotted a different code number. Therefore, any interim order granted by the Court is only in relation to the said Tuticorin Branch and it will not have any effect over the Head Office or the branches which were covered by a different code number. Therefore, the contentions of the learned counsel appearing for the Corporation that due to the pendency of the proceedings initiated by the Tuticorin Branch, they were not able to initiate proceedings is not factually correct.

12.As rightly pointed out by the learned Senior Counsel appearing for the respondent, the Hon'ble Supreme Court had confirmed the



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coverage by its order dated 14.10.1993. The Tuticorin Branch had initiated proceedings only in the year 2005 in respect to the allotment of a different code number to them. In between the 12 years period, there was no legal proceedings whatsoever which would be an impediment for the Corporation to initiate proceedings. For the reasons best known to them, proceedings were not initiated for the determination of the contribution during the said period.

13.As per Regulation No.32(2) of the Employees State Insurance (General) Regulations 1950, every employer shall preserve every register maintained under this regulation after it is filled, for a period of five years from the date of last entry therein. Therefore, it is clear that there is no duty cast upon the employer to maintain any register in relation to E.S.I.Act beyond a period of 5 years from the date of last entry made in the said register.

14.However, no limitation was fixed under Section 45-A of the E.S.I.Act for initiating proceedings for determination of compensation under the original Act. In view of the representation made by various establishments pointing out their difficulties in maintaining a register for a longer period of time and initiation of proceedings after a longer delay,



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an amendment was brought in under Section 45-A of the E.S.I. Act introducing second proviso to the said Section. As per the said proviso, the authorities will not have any power to pass any order beyond a period of 5 years from the date on which the contribution shall become payable. This amendment was introduced with effect from 01.06.2010. A careful reading of the proviso will clearly indicate that the 5 year limitation period starts from the last date on which the contribution has become payable and it does not precede the 5 year period just prior to the date of initiation of proceedings under Section 45-A. Therefore, it is clear that the present impugned order under Section 45-A having been passed on 21.08.2012 covering the period between February 1979 to January 2007 is clearly beyond the powers conferred upon the Corporation to initiate proceedings under Section 45-A.

15.A perusal of the Employees' State Insurance (Amendment) Act 2010 does not disclose any provision to save the pending litigation in relation to the determination or recovery of contribution arising under the E.S.I. Act. Therefore, the contention of the learned counsel appearing for the appellant that the pending litigations are saved and the introduction



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of limitation is not applicable to the pending litigation is not legally sustainable.

16.In view of the above said deliberations, the E.S.I.Court has rightly observed that the impugned order under Section 45-A of the E.S.I. Act is clearly barred by limitation. Therefore, there is no illegality or infirmity in the order and this Civil Miscellaneous Appeal stands dismissed. No costs.

20.03.2023

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

1. The Judge
Labour Court
Tirunelveli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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