



C.M.A.(MD).No.1007 of 2022

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 21.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.1007 of 2022

and

C.M.P.(MD).No.9978 of 2022

Box Packer,
Tirunelveli Dindigul N.H.Road,
Vallabommanpatti,
Vadamadurai,
Dindigul District.

... Appellant

-Vs-

1.The Deputy Director (INS II),
ESI Corporation,
Sub Regional Office,
4th Main Road,
K.K.Nagar,
Madurai 20.

2.The Recovery Officer,
ESI Corporation,
Sub Regional Office,
4th Main Road,
K.K.Nagar,
Madurai -20.

... Respondents



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PRAYER: The Civil Miscellaneous Appeal has been filed under Section 82 of the ESI Act, 1948, against the judgment and decretal order of the Employees State Insurance Court, Labour Court, Madurai in E.S.I.O.P.No.25 of 2011, dated 06.06.2022.

For Appellant : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.C.Karthick

J U D G M E N T

The Civil Miscellaneous Appeal has been filed challenging the order of the Employees State Insurance Court, Labour Court, Madurai in E.S.I.O.P.No.25 of 2011, dated 06.06.2022.

2. The first respondent has passed an order under Section 45 (A) of the ESI Act, 1948, dated 20.03.2007, assessing the contribution on *ad hoc* basis at the rate of 6.5% on assumed wage of Rs.4,125/- per month for the period from 8/2001 to 9/2005 in respect of 36 employees and determined contribution of Rs.4,41,441/- . Pursuant to the above proceedings, notice has been issued to recover all the amount on 18.01.2011, determining Rs.6,67,250/-. Challenging the same, the



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above said E.S.I.O.P. has been filed on the ground that the respondent ESI Corporation has not allotted a code number. According to them, only 19 employees were working in the factory during the relevant period and Rs.1,000/- was paid as wages to their employees. The respondent ESI Corporation has not followed the principles of natural justice and EST Act, without providing medical benefits and other attendant benefits enunciated under the ESI Act, they have no right to claim contribution for the period for which the medical benefits were denied to the employees. Therefore, the order under Section 45 (A) of the ESI Act and the consequent recovery proceedings of the respondent ESI Corporation have been challenged. The same was repudiated in the counter, wherein it is clearly stated that the petitioner Unit was coverable under the provisions of the ESI Act with effect from 01.08.2001 as a factory as the Unit was employing more than the required number of employees for coverage. The employer themselves ought to have taken action as required under law to cover the unit within 15 days from 01.08.2001. However, they violated the statutory provisions of the ESI Act and failed to cover the Unit in time. Therefore, after ascertaining the coverage information, the respondent Corporation itself covered the unit under the said Act with effect from 01.08.2001, thereby allotting the code number and the same has



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also been intimated to the petitioner unit. Despite lawful coverage, there was no compliance by the employer in time. Therefore, the first respondent has issued a notice in Form C-18, dated 21.04.2006, proposing to charge contribution of Rs. 4,41,441/- for the period from 01.08.2001 to 30.09.2005, after giving personal hearing. However, there was no response. Hence, an order under Section 45 (A) of the ESI Act, dated 20.03.2007, has been passed by the first respondent determining the contribution payable at Rs.4,41,441/-. Still there was no response from the petitioner. Hence, the recovery proceedings has been initiated. In the mean time, the petitioner has paid the contribution of Rs.15,838/- which was adjusted and for the remaining amount of Rs.6,67,250/-, a recovery notice dated 18.01.2011 was issued by the recovery officer. Therefore, it is the contention that without challenging the order under Section 45(A) of the ESI Act, which has reached finality, recovery proceedings cannot be challenged.

3. Before the Labour Court, on the side of the petitioner, P.W.1 was examined and Exs.P1 to P7 were marked and on the side of the respondents, R.W. 1 was examined and Exs.R1 to R14 were marked.



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4. Based on the evidence and materials, the Labour Court found that the petitioner unit was covered under the ESI Act with effect from 20.06.2001 and the same was intimated to the petitioner unit on 13.03.2006, on the basis of survey report, dated 20.06.2001 and the petitioner also paid the contribution from the month of May 2001. Therefore, after analysing the entire evidence, the Labour Court has dismissed the application filed by the petitioner. Challenging the same, the present appeal has been filed.

5. The question of law arises in this appeal is without challenging the order passed under Section 45(A) of the ESI Act in time, whether the recovery proceedings alone can be challenged before the ESI Court?

6. The learned counsel appearing for the appellant would submit that the ESI Court has not appreciated the evidence and the contribution could not have been arrived by the ESI Corporation. Therefore, the order of ESI Court has to be set aside.



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7. The learned counsel appearing for the respondents ESI Corporation would submit that the order determine the contribution, passed under Section 45 (A) of the ESI Act, on 20.03.2007, which has been duly served. Even thereafter, no contribution has been paid. Therefore, the recovery proceeding has been initiated in the year 2011. In the absence of any challenge made to the original order passed under Section 45 (A) of the ESI Act in time, the application filed before the ESI Court is not maintainable.

8. It is the admitted case of the petitioner that the order has been passed under Section 45(A) of the ESI Act in proceedings No.57-47563-90/INS II/SRO/MDU/74/13/07, dated 20.03.2007. Thereafter, the recovery proceedings has been issued on 18.01.2011, determining a sum of Rs.6,67,250/-.

9. It is relevant to note that if the employer is not satisfied with the order passed under Section 45(A) of the ESI Act, he has an option to file either an appeal before the appellate authority within 60 days from the date of such order, after depositing 25% of the contribution so ordered for the contribution or to



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challenge the same before Tribunal. The statutory right available for the petitioner to challenge such a proceeding is to file an application before the ESI Court. Such application is to be filed within three years from the date on which the cause of action arose. Section 77 (1-A) of the said Act provides such a remedy. Therefore, the order under Section 45(A) of the ESI Act ought to have been challenged in the manner known to law.

10. Admittedly, the said order has not been challenged either by way of statutory appeal provided under Section 4 (A) of the ESI Act or an application before the ESI Court within a period of three years, whereas the application has been filed before the ESI Court challenging the recovery proceedings initiated in the year 2011. When there is a specific time stipulated, such limitation cannot be extended. Therefore, when the applicant has not filed either an appeal or an application within a time, recovery proceedings cannot be put into challenge. Accordingly, the question of law is answered. I do not find any merit in this appeal.



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11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.
Consequently, the connected Miscellaneous Petition is closed.

21.06.2023

akv

To

- 1.The Employees State Insurance Court,
Labour Court,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR,J.

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