



CMA(MD).No.200 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2023

PRONOUNCED ON : 15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.200 of 2017
and CMP(MD).No.2447 of 2017

1.Joint Director
Employees State Insurance Corporation
Sub-Regional Office
Tirunelveli 627 001

2.Recovery Officer
The Employees State Insurance Corporation
Through its Joint Director
Sub Regional Office
4th Main Road, K.K.Nagar
Madurai 625 020

...Appellants

vs.

M/s.Madura Coats Private Ltd.,
83 & 88, Beach Road
Tuticorin 628 002
Represented by its Manager -HR

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, to set aside the order dated 28.01.2016 passed by the ESI Court (i.e Labour Court), Madurai in E.S.I.O.P.No.16 of 2007 uphold the



CMA(MD).No.200 of 2017

claims of the ESI Corporation with necessary directions in favour of the appellants.

For Appellants : Mr.P.Ganapathisamy

For Respondent : Mr.T.Ravichandran

JUDGMENT

The above appeal has been filed by E.S.I Corporation challenging an order passed by the Labour Court in E.S.I.O.P.No.16 of 2007.

2.The E.S.I.Corporation has passed an order under Section 85(B) of the ESI Act 1948 as against the respondent company on 21.12.2006 levying damages to a tune of Rs.6,94,601/- for delayed payment of contribution on the interim relief for the period covering December 1999 to July 2006. The said order was challenged by the Management before the E.S.I Court, Madurai in E.S.I.O.P.No.16 of 2007. The E.S.I Judge was pleased to allow the said petition by an order dated 28.01.2016. Challenging the same, the present appeal has been filed by the E.S.I Corporation under Section 82 of E.S.I Act.



CMA(MD).No.200 of 2017

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3.The respondent is a private limited company running a textile mill at Tuticorin and it is covered under E.S.I Act. The management and the workers had entered into a settlement under Section 18(1) of Industrial Disputes Act on 10.08.1999 whereunder it was agreed that each worker would be paid a lump sum of Rs.2,080/- as an interim relief of Rs.260/- per month till a settlement is amicably reached between the parties. By way of Government Order in G.O(D).No.1254 dated 14.12.1992, the Government of Tamil Nadu had referred the dispute for adjudication of Industrial Tribunal.

4.While the matter was pending before the Industrial Tribunal, the E.S.I. Inspector had visited the petitioner Mill and issued a spot letter on 22.12.1999 directing the management to pay contribution of Rs.93,991/- in respect of interim relief paid and an amount of Rs.7,805/- towards short remittance in respect of 5 contractors. The Form C.18 was issued by the Corporation on 14.02.2000 proposing to levy contribution of Rs.1,01,796/- for the period from April 1997 to March 1999.

5.The E.S.I.Corporation has passed an order under Section 45A of E.S.I.Act on 23.04.2002 determining the contribution payable as



CMA(MD).No.200 of 2017

Rs.93,991/- on the interim relief payment and the same was challenged by the management in E.S.I.O.P.No.13 of 2003.

6.After pronouncing of judgement of the Hon'ble Supreme Court in Employees State Insurance Corporation Vs. Gnanambigai Mills Ltd., dated 19.07.2005, the interim relief should also be treated as wages. Therefore, the management remitted the contribution of Rs.11,65,761/- on 22.09.2006. However, a demand was made by the Corporation for payment of interest to a tune of about Rs.4,28,976/- for the belated payment. The said demand for interest was complied with under protest. Thereafter, an order was passed under Section 85(B) of the E.S.I.Act on 02.12.2006 levying a sum of Rs.6,94,601/- as damages. The said order was challenged by the management before E.S.I.Court.

7.The Management had contended before the E.S.I. Court that the interim relief granted to the employees under a settlement could never be construed to be wages and and hence, the question of payment of contribution or interest or damages towards delayed payment would not arise. The Management had further contended that our High Court in a



CMA(MD).No.200 of 2017

judgement *in C.M.A.1050 of 1992 dated 17.01.2001 in Sree Sivakami Mills Limited, Madurai Vs. Employees' State Insurance Corporation, Madras* has categorically held that the interim relief granted to the employee would not fall within the definition of wages. The Hon'ble Supreme Court had reversed the said judgement only on 19.07.2005. Therefore, the delayed payment would not attract damages as contemplated under Section 85(B) of the E.S.I.Act. The E.S.I Judge was pleased to accept the said contention and allowed the petition. Challenging the same, the present appeal has been filed by the E.S.I.Corporation.

8.The learned counsel appearing for the appellants had contended that the Judgement of the Hon'ble Supreme is retrospective in nature and therefore, the definition of wages would certainly include the interim relief from date on which the interim relief was granted to the employees. Therefore, the delayed payment of contribution on the interim relief would certainly attract Section 85(B) of the E.S.I.Act and the Corporation is entitled to recover from the employers by way of penalty and such damages not exceeding the amount of arrears. He had further



CMA(MD).No.200 of 2017

pointed out that though it has been called as an interim relief, it is only part of the wages which would be adjusted in the salary of the employees, once a final statement is arrived at between the management and the employee in future. Therefore, viewed from any angle the interim relief can never be considered an ex gratia amount and it is always part of wages attracting contribution under E.S.I.Act.

9.Per contra, the learned counsel for the respondent Management had contended that our High Court by an order dated 17.01.2001 has categorically held that the interim relief would not attract the contribution as contemplated under the E.S.I.Act. The Hon'ble Supreme Court has taken a different view only on 19.07.2005. The Management had voluntarily deposited the contribution on 22.09.2006 without waiting for any notice from the Corporation. When the Management has voluntarily deposited the contribution amount, the question of invoking Section 85(B) of the E.S.I. Act levying penalty on the employer would not arise. There is no default much less wilful default on the part of the management in payment of the contribution. The reversing of the Judgement of the Hon'ble Supreme Court on 19.07.2005 cannot place the



CMA(MD).No.200 of 2017

management, in such a position that they will have to pay penalty for a different interpretation made by the Hon'ble Supreme Court on a later point of time. Hence, he prayed for sustaining the order passed by the E.S.I. Corporation.

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

11.It is not in dispute that the employers and the workers entered into an settlement under Section 18(1) of the Industrial Disputes Act on 10.08.1999 for granting of interim relief to the employees at the rate of Rs.260/- per month as a temporary arrangement till a final settlement is reached between the parties. The interim relief has been granted to the employees with effect from 01.08.1999 onwards.

12.According to the employers, the interim relief could never be construed to fall under the definition of wages and therefore, the payment of contribution on the said interim relief would not arise. He had further contended that the Judgement of our High Court dated 17.01.2001 had



CMA(MD).No.200 of 2017

categorically declared that the interim relief would not fall within the definition of the wages. Therefore, the non payment or delayed payment of contribution on the interim relief would never be construed to be a wilful act on the part of the Management. The Management was under the impression that in view of the Judgement of the Madras High Court, they are not liable to pay contribution on the interim relief granted to the employees. The Hon'ble Supreme Court by its judgement dated 19.07.2005 have held that the interim relief, even though it is called an ex gratia payment, the same would attract the definition of wages. Therefore, the payment of contribution on the interim relief is also mandatory. The Judgement was pronounced by the Hon'ble Supreme Court on 19.07.2005 and the Management has voluntarily made their contribution only on 22.09.2006.

13.The Corporation has issued a show cause notice on 03.10.2006 calling for explanation why action should not be initiated under Section 85(B) of the E.S.I.Act. Thereafter, orders have been passed on 02.12.2006 levying damages to a tune of about Rs.6,94,601/- for the delayed payment of contribution for the interim relief for the period December 1999 to July 2006.



CMA(MD).No.200 of 2017

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14.From the narration of the above said sequence of dates and events, it is clear that till 19.07.2005, the law laid down by the Madras High Court on 17.01.2001 was prevailing to the effect that the interim relief to the employees would not fall within the definition of wages. However, after 19.07.2005, the Management cannot contend that they were under the impression that the interim relief would not fall within the definition of wages. Therefore, certainly there is a delay on the part of the management from 20.07.2005 till 21.09.2006 in payment of contribution on the interim relief. Therefore, I am of the opinion that the levy of damages by the E.S.I Corporation cannot be set aside in entirety. Certainly the Management has to pay damages for the period between July 2005 to July 2006. However, the E.S.I Court has proceeded to set aside the order of the Corporation in its entirety.

15.In view of the above said discussions, this Court is inclined to pass the following orders:

(i). The order of E.S.I.Court in E.S.I.O.P.No.16 of 2007 and the order of E.S.I.Corporation dated 02.12.2006 are hereby set aside.



CMA(MD).No.200 of 2017

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(ii).The matter is remitted back to the First Appellant for fresh consideration on merits and in accordance with law.

(iii).This appeal is partly allowed in favour of the Corporation for the period covering between 20.07.2005 to 21.09.2006. For the said period, the Corporation is directed to issue a fresh show cause notice and pass orders in accordance with law.

16.Accordingly, this Civil Miscellaneous Appeal is allowed in part to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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1.The Labour Court
Madurai

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



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CMA(MD).No.200 of 2017

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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