



C.M.A(MD)No.265 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.265 of 2020

The Employee's State Insurance Corporation,
Sub Regional Office, 2nd Main Road,
K.K.Nagar (West), Madurai-20.
Represented by its Deputy Director.

... Appellant/Respondent

Vs.

M/s.Shiva Tex Yarn Ltd.,
Velvarkottai, Dindigul District,
Represented by its General Manager.

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of the E.S.I Act, to set aside the order, dated 20.06.2019 passed by the E.S.I Court (i.e. Labour Court), Madurai in E.S.I.O.P.No.73 of 2011, permit the appellant to charge interest, as claimed in the communication, dated 09.08.2011 as permissible under law and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellant.

For Appellant : Mr.P.Ganapathisamy

For Respondent : Mr.K.Hemakarthiskeyan



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JUDGMENT

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The present appeal has been filed by the E.S.I corporation challenging the order of the Labour Court, Madurai in E.S.I.O.P.No.73 of 2011.

2. According to the learned counsel appearing for the appellant, the coverage of the E.S.I Act was extended to the respondent employer with effect from 01.08.2000. However, the said coverage was challenged by the employer by filing various proceedings. Ultimately, the writ petition came to be dismissed on 03.10.2007. After the dismissal of the writ petition, the employer had filed M.P.No.1 of 2008 in W.P.No.26327 of 2007 seeking clarification to the effect that the order of the dismissal of the writ petition will have only prospective effect and therefore, the employer will be under a statutory obligation to deposit the contribution amount only from the date of passing of the order in writ petition, namely 03.10.2007. The learned Judge of this Court passed an order on 08.08.2008 to the effect that the contributions have to be paid by the employer only with effect from 03.10.2007. Pursuant to the said orders, the employer had paid the entire due on 15.09.2008.



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3. The E.S.I corporation on 09.08.2011 issued a notice under Form C-18 seeking interest for the period between October 2007 to July 2008 and August 2009 to a sum of Rs.34,676/-. The said C-18 notice was subject matter of challenge by the employer in E.S.I.O.P.No.73 of 2011.

4. The Labour Court after considering the evidence of both the parties, arrived at a finding that the corporation could not attribute any motive or bad intention upon by the employer to evade payment of contribution. Therefore, the payment made by the employer immediately after passing of the order should be treated as a strict compliance with the statutory regulations and thereafter, the demand for interest is not legally sustainable. On the basis of the said findings, the Form C-18 notice was set aside by the Labour Court. Challenging the said order, the present appeal has been filed by the E.S.I corporation raising the following substantial questions of law:

“(1) Whether E.S.I Court has got power to prevent charging of interest as admissible as per the provisions of the E.S.I Act, 1948 and E.S.I (General) Regulations, 1950?

(2) Whether the order of the E.S.I Court will promote the interest of the workers?

(3) Whether the Trial Court has power to go against the express provisions of statute?

(4) Whether the Trial Court has power to go against the express provisions of law laid down by the Supreme



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Court and this High Court?

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5. According to the learned counsel appearing for the appellant, the learned Judge of this Court has issued an order on 08.08.2008 clarifying that the coverage of the establishment would commence from 03.10.2007. However, the entire contribution amount was made only on 15.09.2008. The interest being statutory and consequential in nature, the same cannot be waived by the authorities or by the Court. The Labour Court ought not to have taken the date of disposal of the writ petition as the crucial date for calculation of interest, when the High Court has specifically clarified that the coverage is from 03.10.2007 onwards.

6. Per contra, the learned counsel appearing for the respondent had contended that though the writ petition was dismissed on 03.10.2007, a clarification petition was pending before the High Court to clarify whether the order would have retrospective effect or prospective effect. An order was passed in the said clarificatory petition only on 08.08.2008. Within 40 days from the date of clarificatory order, the entire amount has been deposited by the employer on 15.09.2008. Therefore, E.S.I Court was right in quashing C-18 notice demand interest.

7. I have carefully considered the submissions made on either side.



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8. A perusal of the order, dated 03.10.2007 indicates that the challenge to the coverage under E.S.I Act was made by the employee's union and it was dismissed on the said date. Thereafter, the employer has chosen to file M.P.No.1 of 2008 to seek clarification whether the order would have a retrospective effect or not. The clarificatory order was issued on 08.08.2008 to the effect that E.S.I Act coverage would start from 03.10.2007. Therefore, it is clear that the coverage of the establishment under the E.S.I Act starts from 03.10.2007. The scope of review is only for the purpose of seeking clarification whether the employer has to pay contribution for the period between August 2001 and September 2007. Therefore, the payment of the contribution from October 2007 onwards was not the subject matter of the review. Hence, the contention of the learned counsel appearing for the employer that they were awaiting for the orders in the review petition till 08.08.2008 is not legally sustainable.

9. The E.S.I Court has taken the date of disposal of the clarificatory petition as crucial date for the calculation of interest. When the High Court has clarified that the Act is applicable from 03.10.2007, the E.S.I Court was not right in holding that interest should be calculated only from August 2008. The learned counsel appearing for the employer had pointed out that in C-18 notice, dated 09.08.2011, it is recorded that



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the payments were made by the employer only on 17.09.2008 and accordingly, interest has to be calculated. However, as per Exhibit P.2 before the E.S.I Court, the entire amount has been paid even on 15.09.2008 and therefore, the calculation relating to interest is not as per the provisions of the Act.

10. In view of the above said deliberations, this Court passes the following orders:

(i) The appeal stands allowed and Form C-18, dated 09.08.2011 is hereby set aside.

(ii) The authorities are at liberty to demand and recover interest for the period between October 2007 to July 2008.

11. With the above said observations, the Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

12.06.2023

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

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WEB COPY To

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



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R.VIJAYAKUMAR,J.

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Judgment made in
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