



C.M.A. (MD)No.51 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.51 of 2023

and

C.M.P.(MD) No.594 of 2023

M/s.Naga Industries,
No.9, Balabagya Godown Sugar Mill Colony,
Madurai Road,
Tirunelveli-627 001,
Rep. by its Partner,
Mr.Vinod Kumar.

...Appellant/Petitioner

Vs.

The Employees State Insurance Corporation,
Rep.by its Deputy Director,
Municipal Shopping Complex, Salai Street,
Sindupoonthurai,
Vannarapettai,
Tirunelveli-627 003.

... Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 82(2) of Employees State Insurance Act, 1948, to set aside the order passed by E.S.I.Court (Labour Court), Tirunelveli in E.S.I.O.P.No.09 of 2017, dated 31.10.2019.



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For Appellant : Mr.S.Karthik
For Respondent : Mr.I.Pinayagash

JUDGMENT

Challenging the order passed under Section 45-A of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act' for the sake of brevity), which was confirmed by the E.S.I.Court, (Labour Court), Tirunelveli in E.S.I.O.P.No.9 of 2017, the present appeal is filed.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the trial Court.

3.The appellant is a partnership firm. They are buying and selling Barbed Wire and Chain Link Fencing. The respondent inspected the property on 06.05.2010 and issued a visit notice mentioning that 10 employees on head count were working in the concern and they were involved in manufacturing wired fence. Hence, C-18 notice was issued requesting the petitioner as to why contribution of Rs.1,43,923/- cannot be recovered from the appellant. Despite all



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the relevant records were produced, the respondent without considering the same passed an order under Section 45-A of the Act on 05.02.2013 directing the petitioner to pay a sum of Rs.1,43,923/-. Challenging the said order, the appellant filed E.S.I.O.P.Nos.8 and 10 of 2013. The petitions were allowed and remanded to the authorities for fresh disposal, in which the authorities concerned passed an order dated 29.03.2016. Challenging the same, the appellant filed E.S.I.O.P.Nos. 12 and 13 of 2016. The ESI Court confirmed the orders passed by the authorities. Hence, he filed C.M.A.(MD)No.346 of 2017 and the same was also dismissed.

4.Pending that appeal, the authorities concerned passed an ex-parte order dated 22.06.2016 on issuing C-18 notice, without considering the appearance of the petitioner/appellant, to pay a sum of Rs.1,93,050/- for the period from January 2013 to December 2015. Challenging the same, the appellant filed E.S.I.O.P.No.9 of 2017 and the ESI Court had confirmed the said order, against which the present appeal is filed by the appellant.

5.Though various grounds have been raised by the appellant in this appeal, the learned counsel for the appellant mainly contended that in the earlier round of litigations, all the documents submitted by the appellant have been



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promptly considered by the authorities. Whereas, in the present case, the contribution amount has been fixed on the ad hoc basis and no documents have been considered by the authorities, though all the necessary documents have been filed by the appellant before the authorities. Further, he had also submitted that the appellant partnership firm does not come under the purview of the Act, as they are not manufacturing any materials and they have not engaged 10 employees as alleged by the authorities.

6.Per contra, the learned counsel for the respondent submitted that in the previous round of litigations, the stand of the appellant that the partnership firm does not come under the purview of the Act, was negatived. Further, he had submitted that even now the appellant has not produced the relevant documents such as, Balance Sheet, Bank Statement, Profit and Loss Account, Ledgers, Attendance Register and Sale Register and if the said documents are produced, the respondent is ready to consider the same and pass appropriate orders in accordance with law.

7.I have heard the learned counsel appearing on either side and perused the materials placed on record.



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8.From the submissions made on either side, it is clear that the issue is narrowed down only with regard to the fixation of proper contribution amount. The stand of the appellant that the appellant partnership firm does not come under the purview of the Act, has reached finality in C.M.A.(MD)No.346 of 2017. Therefore, once again, on the same ground, the appellant is not entitled to challenge the findings of the authorities.

9.In such view of the matter, the matter is remitted to the authorities only for the purpose of arriving at proper contribution amount. The appellant is directed to produce all the relevant documents as demanded by the respondent authorities within a period of fifteen (15) days from the date of receipt of a copy of this judgment. On production of such documents, the ESI authorities shall pass orders on merits and in accordance with law, within a period of one month therefrom. It is also made clear that the appellant is precluded from making any other grounds, which had been already made in the earlier round of litigations, since the said issues have attained finality in view of the judgment in C.M.A. (MD)No.345 of 2017.



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10. With the above observations, this Civil Miscellaneous Appeal is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No

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To

- 1.The E.S.I.Court (Labour Court),
Tirunelveli
- 2.The Deputy Director,
The Employees State Insurance Corporation,
Municipal Shopping Complex, Salai Street,
Sindupoonthurai,
Vannarapettai,
Tirunelveli-627 003.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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