IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-1215-2013 (O&M)
Reserved on 17.7.2023
Date of Decision: 16.10.2023

Employees State Insurance Corporation through its Joint Director

....Appellant

VERSUS

M/s Surya Industries through its partner

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. H.S.Bhatia, Advocate,
for the appellant.

Respondent proceeded *ex parte*
vide order dated 2.6.2016.

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KARAMJIT SINGH, J.

This appeal has been filed by the appellant-Employees State Insurance Corporation, Ludhiana (in short, "the Corporation") against order dated 8.6.2012 passed by Employees State Insurance Court, Ludhiana (in short, "ESI Court") whereby the petition filed by the respondent-M/s Surya Industries under Section 75 of the Employee's State Insurance Act, 1948 (in short, "the Act") was allowed and order dated 19.9.2001 passed by the competent authority under Section 45-A of the Act was set aside.

2. Brief facts of the case of the respondent are that it was a partnership firm covered under Employee's State Insurance Scheme having been allotted Code No.PB-12/26868 and the firm maintained its records properly and regularly. All the payments of contribution due to the Corporation were regularly made. The officials of the Corporation used to visit the office of the firm periodically. On the basis of some inspection of

the record by the Inspector(s) of the Corporation for the period from 12/1993 to 2/1996, the respondent received C-18 bearing No.Pb12/26868/C-139/2K dated 8/9.8.2000 from the Corporation claiming contribution regarding omitted wages of ₹ 45,000/- and ₹ 14,600/- to the tune of ₹ 3278/-, to which, the respondent raised objection vide letter dated 28.8.2000. However, the Corporation passed order dated 20.12.2000 under Section 45-A of the Act whereby demand of ₹ 3278/- along with ₹ 148/- as interest was raised on account of contribution on the omitted wages for the above stated period. No opportunity of hearing was granted to the respondent before issuance of the said demand notice. The respondent deposited the aforesaid amount. In the meanwhile, another letter dated 14/17.7.2000 was issued by Deputy Regional Director of the Corporation on the basis of the test inspection alleged to be conducted by the officials of the Corporation on 2.9.1996. By virtue of the said letter, the respondent demanded contribution of ₹ 81,351.51. The contribution of the said amounts was already made by the respondent to the Corporation. The respondent filed detailed reply dated 11.8.2000 to the aforesaid letter. However, the same was not considered and the Corporation issued C-18 dated 24/25.8.2000 for the period 1993-94 again and for the period 1995-96 reiterating demand of ₹ 83,611.51 and in this regard, correspondence continued till May, 2001. The earlier order dated 20.12.2000 also covered the aforesaid period for which contribution was already paid. Thereafter, the respondent furnished all the concerned record during the personal hearing. Despite this, the Corporation vide letter dated 29/30.5.2001 demanded the original ledgers, cash books and vouchers and gave direction to the respondent to produce the same at their Chandigarh office. On this, the representative of the respondent visited the said office and delivered letter dated 30.6.2001. However, the competent authority without affording any opportunity of hearing passed impugned order dated 19.9.2001 under Section 45-A of the Act whereby the Assistant Regional Director assessed the contribution totaling ₹ 83,612/- for the period from 1993-94 and 1995-96 and the interest was assessed as ₹ 1077/- up to 21.8.2001 along with future interest @ 15% p.a. till its realization. The same was followed by C-19 dated 9.11.2001 which was also issued without granting any opportunity of hearing to the respondent to defend its case and without inspecting the record. Being aggrieved, the respondent filed petition under Section 75 of the Act.

3. Petition was contested by the appellant Corporation and the written statement was filed contesting the claim of the respondent. The appellant in its written statement took preliminary objections with regard to maintainability of the petition and concealment of facts. On merits, it was pleaded that the respondent had not maintained its record properly and regularly. It was further pleaded that the test inspection was conducted by Deputy Regional Director on 2.9.1996 and the record produced by the respondent was not complete and the respondent did not produce cash books/vouchers and some other relevant records at the time of spot inspection. Thereafter, the respondent kept on delaying the matter on one pretext or the other and then notice dated 14.7.2000 was served to the respondent whereby demand of ₹ 81,351.51 was raised by the Corporation. It was further pleaded that notice C-18 was also issued to the respondent

after giving him proper opportunity of hearing on 29.8.2000. However, the respondent sent letter dated 28.8.2000 raising objections but its representative failed to turn up for personal hearing on 29.8.2000. Another opportunity of personal hearing was afforded to the respondent on 6.9.2000 and at that time, authorised representative of the respondent appeared before Deputy Regional Director of the Corporation and they sought adjournments time and again and finally, produced part of the record on 29.1.2001 for the year 1993-94 and the remaining record was never produced. Kanwal Nain, Inspector conducted rechecking of the record and submitted his report dated 22.5.2001. It was further pleaded that the record produced by the respondent was false and fabricated. However, it was admitted that the respondent deposited a sum of ₹3278/- on account of contribution on the wages for the period from 12/1993 to 2/1996. It was pleaded that the petition be dismissed.

4. On the basis of the rival pleadings of the parties, ESI Court framed the following issues : -

1. Whether the order dated 19.09.2001 passed under Section 45 of the Employees State Insurance Act and recovery proceedings initiated in consequences thereof are null, void, illegal and arbitrary? OPP
2. Whether petitioner is entitled for declaration as prayed for? OPP
3. Whether the petition is within time? OPP
4. Whether petition is not maintainable in view of Section 75-B of ESI Act? OPR

5. Relief.

5. The respondent in support of its claim examined PW1-Amit Munjal partner and PW2-Gulshan Batra. The respondent also produced various documents Ex.P1 to Ex.P15 and AW2/1 to AW2/3. On the other hand, the Corporation examined RW1-Balwinder Kumar.

6. After hearing counsel for the parties, ESI Court came to the conclusion that demand raised by the appellant was clearly time barred as it was relating to the period beyond 5 years and consequently, the petition was allowed and the impugned order dated 19.9.2001 along with all the subsequent proceedings thereof were set aside.

7. Being aggrieved, the appellant Corporation has filed the present appeal.

8. I have heard the counsel for the appellant, who while placing reliance on the decision of Hon'ble Supreme Court in **E.S.I.C.** v. **C.C.Santhakumar** (2007) 1 SCC 584 has *inter alia* contended that demand notice issued by the appellant was relating to the period up to 1996 and at that time, no statutory period of limitation was fixed for recovery of the contribution in question.

9. Counsel for the appellant further submits that it being settled position of law, the finding recorded by ESI Court concerned that the demand raised by the appellant was time barred, is totally illegal and deserves to be set aside. So, prayer is made that consequently, the present appeal be also allowed.

10. I have considered the submissions made by the counsel for the appellant and gone through the record of ESI Court.

11. Admittedly, Section 45-A of the Act was amended vide Gazette Notification dated 25.5.2010 and the following proviso was added by way of amendment :-

> "Provided further that no such order shall be passed by the Corporation in respect of the period beyond 5 years from the date, on which, contribution shall become payable".

12. Prior to incorporation of the aforesaid amendment, no such period of limitation was prescribed in the Statute. In **C.C.Santhakumar's case (supra)**, Hon'ble Supreme Court held that if the period of limitation, prescribed under proviso (b) of Section 77(1A) is read into the provisions of Section 45A, it would defeat the very purpose of enacting Sections 45A and 45B. The prescription of limitation under Section 77(1A)(b) of the Act has not been made applicable to the adjudication proceedings under Section 45A by the legislature, since such a restriction would restrict the right of the Corporation to determine the claims under Section 45A and the right of recovery under Section 45B and further, it would give a benefit to an unscrupulous employer.

13. In light of above, this Court is of the view that ESI Court has committed a patent error in holding that impugned order dated 19.9.2001 is time barred as per Section 45-A of the Act in respect of determination of dues of contribution pertaining to the period from 1993 to 1996.

14. Plea taken by the respondent in its petition under Section 75 of the Act that the respondent was not afforded proper opportunity to produce the record and not given effective opportunity of hearing, was repelled by ESI Court in para. 13 of the impugned judgment which reads as follows : -

"13. Impugned order dated 19.09.2001 is detailed order showing the deep scrutiny conducted by respondent. Petitioner failed to produce any cogent evidence to rebut the findings recorded in impugned order dated Exh. P-13. Allegations of non giving of opportunity of hearing stands falsified from the record placed on record particularly letters Exh. P-6 and Exh. P-9. Plaintiff is not entitled to any relief on this count."

15. No appeal has been filed by the respondent against the aforesaid findings recorded by ESI Court and thus, the said findings have attained finality.

16. For the foregoing reasons, the present appeal is allowed and the impugned judgment passed by ESI Court is hereby set aside.

(KARAMJIT SINGH)
JUDGE

October 16, 2023
Paritosh Kumar

Whether speaking/reasoned Yes/No
Whether reportable Yes/No