

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Biswaroop Chowdhury

***M.A.T. 1019 of 2024
(CAN 1 of 2024)***

***M/s. Multytech Enterprise & Anr.
-Vs-
The State of West Bengal & Ors.***

For the Appellants	:	Mr. Simanta Kabir, Adv., Mr. Shiladitya Barma, Adv., Ms. Priyanka Ghosh, Adv.
For the State	:	Mr. Srijan Nayak, Adv., Ms. Tiruparna Maitra, Adv.
For the ESI Corpn.	:	Mr. Shiv Chandra Prasad, Adv.
Heard on	:	19.07.2024
Judgment on	:	19.07.2024

Joymalya Bagchi, J. :-

1. Appellant is aggrieved by the judgment and order dated 19.03.2024 whereby the Hon'ble Single Bench refused to interfere with the order dated 30.10.2023 passed by the appellate authority dismissing

the appeal under Section 45AA of the ESI Act on the ground that it was barred by limitation.

2. Factual matrix giving rise to the proceeding are as follows:-

3. Appellants carry on business in sub-contracting pile work etc. On 19.12.2017 notice was issued upon the appellants by ESI Corporation to take steps for registration under the ESI Act. Appellant No.1 got itself registered under the said Act. On 12.03.2019, respondent No.5 issued notice upon the appellants to submit statutory return. On 18.09.2019, an inspection was held and appellant No.2 reported that the establishment does not employ 10 or more workmen. Without taking into consideration the contention of appellant No.2, show cause notices were issued upon the appellants with regard to a demand of Rs.1,84,000/- towards ESI contribution for the period December, 2017 to March, 2020.

4. Challenging the show cause notices appellants approached this Court in WPA 19899 of 2022. Hon'ble Single Bench by order dated 03.04.2023 gave liberty to the appellants to file appeal under Section 45AA of the ESI Act within six weeks from the date of the order. Due to circumstances beyond the control of the appellants, the appeal could not be filed within the stipulated time framed but the appellants preferred appeal before the appellate authority in September, 2023 which came to be dismissed as barred by limitation.

5. Appellants again approached this Court in the present proceeding but the Hon'ble Single Bench did not accede the prayer of the appellants to remand the matter before the appellate authority to be heard on merits and dismissed the writ petition.

6. Learned Advocate for the appellants contends that his client has an arguable case as the establishment did not employ 10 or more persons at any point of time and was erroneously registered under the ESI Act.

7. Mr. Prasad for ESI Corporation submits that appellant No.2 had voluntarily registered his establishment under the Act and was duty bound to pay the contribution. Presently, a demand of Rs.2,80,710/- has been raised upon the appellants.

8. We have considered the rival submissions at the Bar. Appellant No.2 contends he had not employed 10 or more persons in the establishment at any time. But the Corporation submits that the appellant No.2 had voluntarily registered its unit under the Act. In the earlier proceeding this issue was remanded to be decided on merits before the appellate authority and the appellants were permitted to file appeal within six weeks. It is submitted due to circumstances beyond the control of the appellants, appeal could not be filed within the time stipulated. However, appellants filed the appeal in September, 2023 which came to be dismissed as barred by limitation. Appellants submit a last opportunity may be given to them to canvass their case before the

appellate authority. As an equitable measure, they undertake to deposit half of the demand raised upon them as a condition precedent for approaching the appellate authority.

9. ESI Act is a social legislation and contribution payable towards employees under the Act requires to be paid promptly. On earlier occasion appellants were given opportunity to canvass their case before the appellate authority but contend they failed to do so due to circumstances beyond their control.

10. Under such circumstances and balancing the equities between the parties, we grant a last opportunity to the appellants to canvass their case before the appellate authority on condition they deposit a sum of Rs.1,40,305/- against the demand of Rs.2,80,710/- before the respondent No.2 within fortnight from date. In the event, the appellants deposit the amount within the aforesaid timeframe, impugned order dated 30.10.2023 passed by the appellate authority shall be set aside and the appeal shall be heard on merits within a month thereof.

11. In the event the appellants fail to deposit the said amount within the time as stipulated, the order of the Hon'ble Single Bench confirming order dated 30.10.2023 of the appellate authority shall remain unaltered.

12. With this direction, the appeal is disposed of.

13. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

14. There shall be no order as to costs.

15. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Biswaroop Chowdhury, J.)

(Joymalya Bagchi, J.)

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