IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM:

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.17565, 17566 & 17567 of 2011

M/s.India Pistons Ltd.,
Rep.by its Director
Huzur Garden
Sembium
Chennai 600 011. ... Petitioner in all W.P.Nos.

Vs.

The Deputy Director
The Employees' State Insurance Corporation
Regional Office (Tamil Nadu)
143, Sterling Road
Chennai 600 034. ... Respondent in all W.P.Nos.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent with respect of the orders dated 30.06.2011 and quash the portion that observes that voluntary payments made are permissible and direct the respondent to forthwith refund the amount of Rs.1,88,108/-, 1,71,453/- and Rs.8,39,896/-respectively, deposited by the petitioner in compliance of interim order dated 28.06.2010 in M.P.No.1 of 2010 in W.P.Nos.13531, 13532 and 13533 of 2010 together with 12% interest from the date of such deposit and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice. (Prayer amended as per order dated 12.08.2011 by KCJ in Mps.No.2, 2, & 2 of 2011 in W.P.Nos.17565 to 17567 of 2011).

For Petitioner in
all W.P.Nos. : Mr.S.Shivathanu Mohan
for Mr.S.Ramasubramanian

For Respondent
in all W.P.Nos. : M/s.S.Jeyakumari
Standing Counsel

COMMON ORDER

These three Writ Petitions are connected to each other and as such have taken up and disposed of by this Court common order.

2. The prayer in these Writ Petitions are to refund an amount of Rs.1,88,108/-, 1,71,453 and Rs,8,39,896/- respectively, together with interest at the rate of 12% from the date of deposit till the date of refund.

3. The brief facts leading to the filing of these Writ Petitions are that by the orders dated 04.06.2010, the respondent Corporation directed the petitioner to pay a contribution for the period 2001 to 2003, 2003-04 and 2004-05. As against the said orders, the petitioner approached this Court by way of W.P.Nos.13531, 13532 and 13533 of 2010. While entertaining the Writ Petitions and granting of interim orders this Court had directed the petitioner by an order dated 28.06.2010 to deposit 10% of the total amount of contribution as determined in the orders impugned in the Writ Petitions. Accordingly, the aforesaid three amounts in respect of the three years in all totalling to a sum of Rs.11,99,457/- was deposited by the Writ Petitioner in compliance of the interim order.

4. The matter thereafter was taken up for final disposal and by the judgment dated 23.12.2010 this Court allowed all the three Writ Petitions. This Court on the finding that the claim and determination are beyond the period of limitation prescribed under the Act, remitted back the matter to the respondent Corporation to redo the exercise afresh after giving an opportunity to the petitioner Management. Even while remitting the matter, the following directions were given in paragraph Nos.10 & 11 of the said order, which reads as follows:

> *"10. A perusal of the impugned order shows that the proviso to Section 45A of the Act has not been kept in mind and it consists of periods barred by the proviso as well as the periods not covered by the proviso. Hence, this Court is of the view that the impugned order must be set aside and the respondent to redo the exercise afresh in the light of the proviso, after giving opportunities to the petitioner. If any order is passed pursuant to the direction given by this Court, the petitioner can always work out his remedy in terms of the Act and in case, if appellate authorities are notified, they can always approach the appellate authority. The writ petitions are allowed to the extent indicated above. No costs. The Miscellaneous Petitions stand closed.*
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> *11. At this stage, Mr.Sanjay Mohan, learned counsel for the petitioner submitted that by virtue of the orders passed dated 28.06.2010, the petitioner had*

deposited amounts and if the impugned orders are quashed, they are entitled to get the refund of the said amount. Since this Court had not decided the merits of the liability of the petitioner and has only permitted the ESI authorities to perform their statutory duties in accordance with the amended provision, the question of refund of the deposit made, pursuant to the interim orders passed by this Court on 28.06.2010 can be decided after the outcome of the orders to be passed by the ESI Corporation."

5. Thereafter, the present order dated 30.06.2011 is passed under Section 45A of the Employees' State Insurance Act, 1948. By the present order, the respondent Corporation held in favour of the petitioner with the reference to the period of limitation, however, did not order refund. It is essential to extract Paragraph Nos. 9 to 11 of the said orders which reads as follows:

"9. In obedience of the orders of the Hon'ble High Court dated 23.12.2010 a fresh notice has been issued to the employer for appearing before the undersigned on 18.04.2011 with the connected records

for the relevant period. The employer's representative Shri.A.Prabhakaran, Senior Executive (Finance) and Shri.Karthick, Advocate appeared before me and pleaded that the period involved was more than five years old and therefore, in accordance with second proviso of 45-A (1) of the Act came into effect from 01.06.2010, no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which contribution shall become payable and submitted a letter also. Non-production of relevant original records and non-appearance for personal hearing by principal employer despite many opportunities provided to him has led to delay in determination and passing the said order. In response to the notice the employer should have worked out the wage element and paid the contributions under the provision of Section 45A. But the employer failed to do so. The employer however, took shelter under this new proviso against fresh determination.

10. I have applied my mind to all the above facts and considered the technical objections advanced by the employer.

11. For the above reasons I, K.V.Ramana, am unable to make any fresh determination for the said *period. The second proviso to Section 45-A (1) only prohibits authorized officer of the Corporation to pass an order in respect of a period beyond five years from the date on which the contributions shall become payable, but no such time restriction was prescribed in the said proviso on the part of the principal employer to work out the legally payable contribution and pay contribution on his own."*

6. It can be seen that while holding that no contribution was payable as it was beyond the period of limitation, the respondent Corporation has taken a view that there is no bar under the Act for voluntary payment of the employers contribution and the amounts have been deposited by the employer on its own, refund need not be made.

7. Heard the learned counsel appearing on behalf of the petitioner who after reiterating the above facts would submit that when the order under Section 45A of the Act went in favour of the petitioner, the refund becomes automatic. According to him, in the earlier order, it has been categorically held that the refund will depend upon the ultimate order that will be passed under Section 45A of the Act and the same is binding on the respondent Corporation and once they have held that no contribution was levyable, refund ought to have been ordered.

8. Per contra, M/s.S.Jayakumari, the learned Standing Counsel appearing on behalf of the respondent Corporation would submit that this Court had only stated that the refund would depend upon the ultimate order that will be passed under Section 45A of the Act. The order which is passed under Section 45A of the Act is categorical and clear that only in view of the subsequent amendment, the levy could not be made. However, it can be seen that the period of limitation always bars the recovery or the remedy and when the employer has voluntarily deposited the amount in respect of the said period, the Authority has rightly concluded that the same need not be refunded.

9. I considered the rival submissions made on either side and perused the material records.

10. As rightly contended by the learned counsel for the petitioner that the amendment was not subsequent and was in force even as on date when the demand was made. Secondly, Paragraph No.11 of the impugned order is extracted above. In this case, it cannot be said that the petitioner paid the said contribution on its own. It was paid as per the directions of this Court while granting the interim order. As such no party or an individual can be put into a disadvantageous position for complying with the interim orders of this Court, which is only passed pending the Writ Petitions subject to the final out come of the Writ Petitions. In the final outcome this Court has categorically held that the refund would depend upon the ultimate order that will be passed by the Authority. The ultimate order which is passed having gone in favour of the petitioner, naturally the Authorities ought to have refunded the said amount. The reasoning given that the time restriction will not apply for the principal employer to pay contribution on its own is incorrect as the petitioner did not pay the contribution on its own but, only in compliance of the interim order of this Court. Therefore, I am of the view that the order which is passed under

Section 45A of the Act though not directly challenged, is liable to be interfered with in part, in as much as, the reasoning contained in Paragraph No.11 above that the petitioner will not be entitled to refund of the said amount. As far as interest is concerned, once this Court has held that the refund should be considered after passing of the order, I am of the view that the petitioner will be entitled to interest from 30.06.2011 which is date of passing of the order.

11. The learned counsel appearing on behalf of the respondent corporation would submit that in any event the petitioner will certainly not be entitled to interest. She would submit that when the petitioner succeeded earlier even though Section 45A order was set aside, the amount was not directed to be refunded but was ultimately was made subject to Section 45A orders. In the Section 45A order, when the Authorities have specifically ordered no refund is possible then no interest can be leviable. In any event, the claim of interest at the rate of 12% is absolutely unjustifiable. Coming to the question of interest, it can be seen that though this matter does not arise strictly by way of an appeal under Section 45A, still as per the Employees'

State Insurance (General) Regulations 1950, when an Appellate Authority interfere with the order and employer succeeds in the appeal, then the Appellate Authority shall order refund along with the simple interest as specified under Regulations 31A. The simple interest specified under Regulations 31A is 12% per annum.

12. In this case, the petitioner did not even go to the Appellate Authority, but the very determining Authority himself has held in his favour. Therefore, this Court can adopt the same percentage of 12% interest when it comes to refund. Therefore, the Writ Petitions are allowed on the following terms:

> The respondents are directed to refund the sum of Rs.11,99,457/- along with further interest at the rate of 12% per annum from 30.06.2011 till date of disbursement.

No costs.

18.11.2024

Neutral Citation : Yes
Index : Yes
Internet : Yes

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To

The Deputy Director
The Employees' State Insurance Corporation
Regional Office (Tamil Nadu)
143, Sterling Road
Chennai 600 034.

D.BHARATHA CHAKRAVARTHY, J.

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