IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

WA.No.1906/2010

Tamil Nadu State Marketing Corporation Ltd
rep.by its Managing Director, CMDA Towers,
IV Floor, Gandhi Irwin Bridge Road
Egmore, Chennai 600 008. ... Appellant

Vs.

1.Employee State Insurance Corporation
rep.by its Regional Director, Tamil Nadu Region
No.143, Sterling Road, Chennai 600 034.

2.The Recovery Officer
Employee State Insurance Corporation
Tamil Nadu Region
No.143, Sterling Road, Chennai 600 034.

3.Vijaya Bank
Egmore Branch
rep.by Assistant General Manager
No.123, Marshalls Road
Egmore, Chennai 600 008.

4.TASMAC Employees Union
rep.by P.S.Soundarapandian
Roo, No.204, Madurai Mansion
Masoodhi Street, Chepauk,
Chennai 600 005. ... Respondents

****R4 impleaded vide order dated 30.03.2011**
made in MP.No.1/2022 in WA.No.1906/2010

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 02.07.2010 made in WP.No.4510/2006.

For Appellant	: Mr.J.Ravindran, AAG assisted by Mr.K.Sathishkumar
For RR1&2	: M/s.G.Narmadha for Mr.G.Bharadwaj
For R3	: No appearance
For R4	: Mr.M.Padmanabhan

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

(1)This appeal is directed against the order of the learned Single Judge dated 02.07.2010 made in WP.No.4510/2006, filed by the 3rd respondent herein for issuance of a writ of certiorari to quash the order passed by the 2nd respondent/Recovery Officer dated 13.02.2006.

(2)The order impugned in the writ petition is in the nature of a garnishee order passed under Section 45-G of the Employees' State Insurance Act, 1948. The appellant herein, namely, M/s.TASMAC, is the 3rd respondent in the writ petition.

(3)Even though respondents 1 and 2 in the writ petition filed a counter affidavit contending that the State Government has granted exemption under Section 91 of the ESI Act, to the 3rd respondent, namely the appellant herein, the learned Single Judge disposed of the writ petition after holding that G.O.[D].No.9, Labour and Employment Department dated 09.01.2006 is not valid as the consent of the ESI Corporation was not obtained before granting any exemption which is a statutory requirement before granting exemption. Considering the objection raised by respondents 1 and 2 in the counter affidavit, the writ petition was disposed of with liberty given to the appellant herein to approach the 1st respondent for exemption. A further direction was issued to the writ petitioner to remit the amount payable by the appellant herein with interest accrued thereon to the 2nd respondent herein. Challenging the order of the learned Single Judge, the above writ appeal is preferred by the 3rd respondent in the writ petition/TASMAC.

(4)Mr.J.Ravindran, learned Additional Advocate General appearing for the appellant submitted that the issue has already been decided earlier by a learned Single Judge of this Court in a batch of appeals in CMA.No.790 to 795/2008 dated 06.08.2008 ***[TASMAC Limited rep.by its General Manager [Finance], Egmore, Chennai-8 Vs. The Regional Director, ESI Corporation, 143, Sterling Road, Nungambakkam, Chennai and Another]*** . It is now admitted that for the period from 25.11.2003 to 30.09.2006, the 2nd respondent herein issued individual show cause notices under ESI Act under Form C-18 to the appellant demanding the amount due from the appellant towards ESI contribution for different periods. Challenging the independent show cause notices, applications were filed before the ESI Court [Labour Court]. An interim direction was issued by the ESI Court for depositing 50% of the dues. It is seen that during pendency of the proceedings, 50% of the amount was directed to be deposited by way of pre-deposit pending adjudication before ESI Court. The appellant complied with the requirement of Section 75 [2-B] of the Act by depositing 50% of the amount demanded.

(5)It was at that time, the State Government passed a Government Order vide G.O.[D].No.9, Labour and Employment [L1] Department dated 09.01.2006 granting exemption to the appellant from the provisions of ESI Act. On the basis of the Government Order, the EIOPs filed by the appellants were dismissed as infructuous. However, the Labour Court [Employees' Insurance Court Principal Labour Court] permitted the ESI Corporation to withdraw the contribution already deposited by the appellant herein before the Labour Court by way of pre-deposit [i.e., 50% of the amount demanded by way of ESI contribution]. As against that portion of the order permitting the ESI Corporation to withdraw the amount deposited by the appellant before ESI Court, a batch of Civil Miscellaneous Appeals in CMA.Nos.790 to 795/2008 were filed.

(6)A learned Single Judge of this Court, vide common judgment dated 06.08.2008, taking note of the exemption granted vide G.O.[D].No.9, dated 09.01.2006, passed the following order:-

"9.The fact that the appellant Corporation has been exempted from the payment of contribution to the

ESI Court in terms of G.O.[D].No.9 of the ESI Act and that too retrospectively in terms of Section 91-A is not disputed. The fact that the deposit in this case has been made in terms of Section 75[2B] is also not in dispute. The amount was deposited before the Employees' Insurance Court, Principal Labour Court, and it remains as deposit as the case is not disposed of finally till the G.O., as above was issued. It is therefore apparent that the payment was not made to the respondent Corporation but only to the Court. The department did not take step for withdrawal of the amount, prior to the issuance of the G.O. The deposit remained with the Court and after the G.O. was issued on 09.01.2006, the Court proceedings concluded stating that the entire issue became infructuous consequent to G.O.[D].No.9, Labour and Employment [L1] Department dated 09.01.2006. In such a factual situation, the Employees Insurance Court, Principal Labour Court, is not entitled to treat the deposit made in terms of Section 75[2-B] as a contribute, paid to the Department. It remains only as a pre-deposit to the Court and therefore, the question of allowing the respondent Corporation to withdraw the amount does *not arise.*

10.The Courts including the Apex Court have held in several cases that pre-deposit made as a pre-condition for hearing an appeal or petition remain as a deposit pending adjudication of the issue before the Tribunal of Court as the case may be. It is in the nature of a payment under protest and the Department concerned cannot as a matter of right claim the amount without a legal right to recover the amount. The respondent Department in this case does not have a legal basis for withdrawal of the pre-deposit as a matter of right unless it is able to establish the legal authority to claim the amount.

See:-[1]1996 [83] ELT 29 All[DB] – K.S.Steel Works Vs. UOI.
[2]1996 [82] ELT 177 Bom[DB]-Suvidhe Ltd Vs. UOI.
[3]1999 [112] ELT 34 Del[DB]- Voltan Ltd Vs. UOI.

11.In the present case also it is not in dispute that the deposit made is in the nature of Court deposit in terms of Section 75[2-B] and after the issuance of the G.O., which takes into effect retrospectively. The respondent Corporation does not have the right to claim any contribution from appellant Corporation.

Therefore, the pre-deposit made is not a contribution made to the Employees' Insurance Corporation and the order of the Employees Insurance Court Principal Labour Court directing the respondent Corporation to withdraw such amount cannot be sustained. The order of Employees Insurance Court Principal Labour Court, Chennai, insofar as it permits the respondent to withdraw the amount in deposit is set aside. The appellant is entitled to withdraw the amount in Court deposit."

(7)The very issue whether the respondent / ESI Corporation is entitled to collect the contribution for the period from 25.11.2003 to 30.09.2006 was considered and the learned Single Judge of this Court passed an order setting aside the order of the ESI Court [Labour Court, Chennai], insofar as it permitted the ESI Corporation to withdraw the amount in deposit.

(8)In the light of the order passed by this Court earlier in the batch of cases in CMA.Nos.790 to 795/2008 as against the order ESI Court, the learned Additional Advocate General submitted that the learned Single Judge has not even considered the judgment in CMA.Nos.790 to 795/2008. He also submitted that the judgment in CMA.Nos.790 to 795/2008 operate as *res* *judicata* since the liability that was the subject matter of prior proceedings is for the same period i.e, from25.11.2003 to 30.09.2006. The further submission made by the learned Additional Advocate General is that the ESI Corporation has not provided any facility or the benefits provided under ESI Act to any of the employees of TASMAC.

(9)Learned Additional Advocate General submitted that the ESI Corporation cannot provide the facilities as the appellant has branches throughout the State of Tamil Nadu. Since the employees of TASMAC shops are located in almost every revenue village throughout the State, it is contended that the Corporation is not in a position to provide any facility or medical assistance to their employees throughout the State. It is in the said circumstances, the appellant cannot be saddled with the liability to pay the ESI contribution for the said period. Assuming for a moment that the Government has not obtained consent before passing G.O.[D].No.9 dated 09.01.2006, till such time the Government passes an order granting exemption under Section 91 read with Section 91A of the Act, the respondents cannot be permitted to collect any amount due towards ESI contribution.

(10)This Court finds merit in the submission of the learned Additional Advocate General. From the sequence of events and the orders passed in the batch of Civil Miscellaneous Appeals, namely, CMA.Nos.790 to 795/2008 vide judgment dated 06.08.2008, this Court finds that respondents 1 and 2 have not raised any argument as to the validity of G.O.[D].No.9 dated 09.01.2006 granting exemption. Even though consent is not obtained as required, the fact that the applicability of the Government Order as regards the appellant/Corporation was acknowledged till order was passed by this Court in CMA.Nos.790 to 795/2008 on 06.08.2008. It is a fact admitted before us that no facility or service was provided by the ESI Corporation to any of the employees of TASMAC / appellant Corporation for the same period. In the course of argument, learned counsel appearing for ESI Corporation brought to the notice of this Court that employees of TASMAC have filed a writ petition questioning the Government Order on the ground that the services of ESI should be extended to them as no medial aid or facility is provided by the appellant to any of their employees.

(11)It is now admitted that the writ petition was dismissed. The point to be noted is that contribution collected by ESI Corporation is only for doing service to the employees and the object of the Act was not to collect contribution from all the Establishments irrespective of whether they give the benefit to the employees in cases of sickness, maternity and other facility as provided in the Act.

(12)The introduction of the statute is to provide facilities under ESI scheme envisaging certain benefits in the event of sickness, maternity, employment injury to workmen in connection with the work in the factories and other benefits. When it is admitted that no little benefit is extended by ESI Corporation to any of the employees of TASMAC, it may not be proper to saddle the appellant the State owned Corporation with financial commitment without corresponding obligation.

(13)In these circumstances, this Court finds that the writ petition was disposed of without taking note of the relevant facts as indicated above. Therefore, this Court finds that the order of the learned Single Judge cannot be sustained.

(14)Accordingly, the writ appeal stands **allowed** and the order of the learned Single Judge dated 02.07.2010 made in WP.No.4510/2006 is set aside and the matter is remitted back to the learned Single Judge for considering the matter afresh after taking note of all the facts and issues highlighted in this judgment. No costs.

[S.S.S.R., J.]   [A.D.M.C., J.]
18.10.2024

AP
Internet : Yes

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd
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2.The Regional Director,
Employee State Insurance Corporation
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Vijaya Bank, Egmore Branch
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5.Mr.P.S.Soundarapandian
TASMAC Employees Union
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Chennai 600 005.

S.S. SUNDAR, J.,
and
A.D.MARIA CLETE, J.,

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