IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.1445 of 2021
and
C.M.P. No.7530 of 2021

M/s. ELIXIR ENTERPRISES,
Represented by its Proprietor – V. Srinivasasn,
8/7, Rivera Apartments, 2nd Cross Street,
Gandhi Nagar, Adyar,
Chennai – 600 020. ... Appellant / Petitioner

Vs.

1. The Assistant Director,
Regional Office (Tamil Nadu),
Employee's State Insurance Corporation,
143, Sterling Road,
Nungambakkam,
Chennai – 600 034.

2. The Recovery Officer,
Regional Office (Tamil Nadu),
Employee's State Insurance Corporation,
143, Sterling Road,
Nungambakkam,
Chennai – 600 034. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 82(2) of the Employee's State Insurance Act, 1948 to set aside the Order of the Employees State Insurance Court (Principal Labour Court), Chennai, dated 27.01.2021 in EIOP No.12 of 2018.

For Appellant	:	M/s. S. Ravindran, (Senior Counsel) (for Mr. S. Bazeer Ahamed)
For R1	:	M/s. S. P. Srinivasan
For R2	:	No Appearance

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the appellant – Establishment challenging the Order passed in the Original Proceeding in EIOP No.12 of 2018, dated 27.01.2021 by the Employees State Insurance Court (Principal Labour Court), Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. The Establishment was covered under the Employee's State

Insurance Act (E.S.I Act hereafter) with effect from July 2005. Due to adverse business reasons, the Establishment had stopped its business activities and sme was informed by letter dated 15.03.2006 to the E.S.I Corporation (Corporation hereafter). It also closed the bank account immediately. However, they have paid contribution for the period upto August 2006 to the Corporation. The Corporation has initiated the proceedings seeking contribution for the period from April 2007 to March 2008 and subsequently, by Order dated 29.09.2010, the Corporation has directed the Establishment to pay Rs.85,800/- as contribution to the twenty employees for the period from April 2007 to March 2008. On 06.01.2011, the Establishment has sent a letter to the Corporation to cancel the above Order, subsequently the Corporation has taken recovery proceedings against the Establishment and also issued show cause notice for arrest warrant was also issued against the petitioner stating that he failed to pay the contribution fixed.

4. Aggrieved over the same, the Establishment has initiated the Original Petition before the E.S.I Court. The Corporation has filed written statement and contended that the Order under Section 45-A has been passed

seeking Contribution for the period from April 2007 to March 2008. Since the Order has not been challenged and it became final, the recovery proceedings have been initiated and the show cause notice, dated 20.12.2006 for arrest warrent was also issued. Inspite of opportunities provided, the petitioner Establishment has not come forward to submit their explanation or challenged the Order passed under Section 45-A. Hence, the proceedings initiated for recovery is in Order and after issuance of notice of demand to defaulter, further proceedings were initiated, accordingly, prays to dismiss the original petition.

5. The E.S.I Court, after considering the pleadings framed relevant issues and thereafter, recorded the evidence of both sides. After considering the evidence placed on record, the E.S.I Court has not find any reasons to interfere in the Order passed by the Corporation and dismissed the petition.

6. Aggrieved over the dismissal of the Original proceedings, this Civil Miscellaneous Appeal filed by the Establishment.

7. The learned Senior Counsel Mr. S. Ravindran, who has appeared on behalf of the Establishment has submitted that the Order passed under Section 45-A is a non-speaking Order and without any material evidence. Since, it has not contained any reasons, the Order passed under Section-45-A and consequent Orders are liable to be set aside. The Trial Court has failed to consider the fact that the evidence adduced on the side of the Establishment has not been disputed by the Corporation and since the Establishment has closed its functioning even prior to April 2007, the Order of payment towards contribution for subsequent period is not valid and prays to set aside the Order.

8. The learned counsel, who has appeared on behalf of the Corporation submitted that the Establishment has failed to prove the case that they are not liable to pay the contribution and without any explanation and without proving the fact that the Establishment has stopped his operations prior to April 2007, hence the Establishment shall not entitled to contend that the Corporation has failed to prove the case and prays to confirm the Order passed by the E.S.I Court.

9. Based on the arguments, the following specific question of law is raised by the Appellant herein:

(i). Whether the Corporation is empowered to pass Order under Section 45 without inspection report and Order passed against the Appellant based on show cause notice is valid or not?

(ii). Whether the Establishment could be obsolved from paying the contribution under the Act, based on the notice of termination of lease issued by the Landlord to the Establishment or based on the closure of bank accounts and as per intimation letter intimating ceasement of the operations by the Establishment to the Corporation?

(iii). Whether the Order passed under Section 45-A is valid without any material evidence, in the absence of participation of the employer?

10. The above questions of law interlinked with each other. Admittedly, the Corporation has passed an Order under Section 45-A, dated 29.09.2010, for the contribution period covering between 4th April 2007 to March 2008. It is also admitted fact that prior to passing of the Order on 23.10.2008, show cause notice in Form C-18 was served on the Establishment, who is already covered under the Act. Ex.R.1 – Form C-18 shows that the notice was served on the Establishment, which is a proprietory concern, represented by Proprietor Mr. Srinivasan, intimating

him that the Corporation has proposed to determine and recover the amount of contribution payable with respect of the employees of the Establishment herein under section 45-A of the Act and demanded the Establishment to appear and to give its explanation or reply on 20.11.2008. The copy of this service of Form C-18 notice was also marked as Ex.R.2. Subsequently, yet another notice was issued for calling upon him for personal hearing on 08.07.10 and the Establishment has failed to appear and submit their explanation, consequently an Order dated 29.09.2010 under section 45-A has been passed by the Corporation.

11. In this case, admittedly, the Establishment is a contributor and regularly they have filed returns and paid contributions. They have paid contributions till August 2006 for 10 workmen for the subsequent period (i.e.,) April 2007 to March 2008, no returns filed or contributions paid, hence the Corporation has issued Ad-hoc notice under Form C-18. Since the Establishment has not come forward to file its records or give any explanations to exempt them from paying contributions, the Corporation has resorted to passing Order under Section 45-A of the Act. Section 45-A of the Act reads as under:

> ***"45A. Determination of contributions in certain cases.--****(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any [Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:"*

12. As stated in the earlier paragraph, admittedly, the Establishment herein was paying contributions for 10 workers regularly from the year 2005 till August 2006. Subsequently, they failed to either file returns or come forward to pay contributions, hence the show cause notice calling upon Establishment to pay the contributions for the subsequent period was issued. Admittedly, the representatives of the Establishments or the Establishment have not come forward to furnish any information or explanation for absolving them from paying contributions. Section 45-A empowers the Corporation to pass Order under this section, on the basis of information available to them.

13. In this case, based on the previous returns i.e., for the wages to

be paid for the 10 employees, the contributions have been demanded from the Establishment and prior to passing final Order under the Section 45-A, sufficient opportunities have been given. Without availing the opportunities, now the Establishment claims that they have not furnished the Inspection Report of the Establishment does not hold water, since the show cause notice itself is based on the previous assessment or previous returns and it is not based on any Inspection Report. The notice under Form C-18 is purely based on the Ad-hoc and this calculation under Form C-18 is made on the basis of previous year assessment, which is admittedly paid by the Establishment herein, hence there is no need for any inspection of the Establishment. This Court is of the view that the inspection of the premises of the Establishment does not arise in this case, hence the procedure adopted by the Corporation in passing Order under Section 45-A is perfectly in order.

14. Aggrieved over the Order passed under Section 45-A, the Establishment has approached the E.S.I Court, initiated original proceedings, wherein the Establishment has examined its witness and produced the Ex.P.1 – intimation letter dated 15.03.2006, communication of the closure of its unit to the Corporation. But the receipt of the said letter has been denied

by the Corporation and before the E.S.I Court, no acknowledgement or proof of delivery has been produced. The E.S.I Court has considered this issue and held that no proper intimation regarding closure of the Establishment has been produced and further held that there is no document produced to show that the closure of Establishment was intimated to the Registrar of Companies. This was agitated by the Establishment, stating that the Establishment herein is a sole proprietorship, hence there cannot be any submission of intimation to Registrar of Companies. This Court agrees with the submissions of the Establishment that they could not have submitted any document regarding closure of their unit to the Registrar of Companies.

15. However, Ex.P.1– intimation letter dated 15.03.2006 has not been proved to be delivered or the receipt of the same has not been proved, the E.S.I Court has rightly held that the petitioner has not properly proved the fact that the closure of the Establishment was timely intimated to the Corporation. They further relied on the letters marked as Ex.P.9 and Ex.P.2, which are the Notice of termination of lease issued by the Land Lord and the intimation of closure of bank account of the Establishment. These documents only would support the case of the Establishment to the extent that they have

come forward to close the bank account and also the receipt of notice for termination of lease of their premises. Except Ex.P.1, P.2 and P.9, no documents or any other evidences has been adduced before the E.S.I Court to show that the Establishment has been closed or they have terminated their production activities and they are entitled to stop from paying contributions.

16. The Hon'ble Apex Court in ***Modella Woollens Ltd. vs Employee's State Insurance Corporation and another [1994 Supp (3) SCC 580]*** has held that, when the Establishment has failed to produce any document or any evidence to show that the exact amount payable by them, the assessment made on Ad-hoc basis is proper. In this case, admittedly, the Establishment has failed to prove their case before the E.S.I Court that they are not liable to pay contributions.

17. Based on the above discussions, this Court finds no substantial question of law involved in this case and the E.S.I Court has factually dealt with all the aspects and dismissed the original proceedings initiated by the Establishment and this Court finds no infirmity in the above Order. Since no substantial question of law involved in this appeal, it is liable to be

dismissed. Consequently, the recovery proceedings initiated for the purpose of recovering the contributions also valid.

18. In the result, this Civil Miscellaneous Appeal is dismissed and the Order of the E.S.I Court is confirmed. Consequently, connected civil miscellaneous petition stands closed. No cost.

22.03.2024

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Assistant Director,
Regional Office (Tamil Nadu),
Employee's State Insurance Corporation,
143, Sterling Road,
Nungambakkam,
Chennai – 600 034.

2. The Recovery Officer,
Regional Office (Tamil Nadu),
Employee's State Insurance Corporation,
143, Sterling Road,
Nungambakkam,

Chennai – 600 034.

3. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

stn

C.M.A. No. 1445 of 2021

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