IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3568 of 2021

1.The Employees State Insurance Corporation,
Regional Office, Pondicherry,
Represented by its Regional Director/
Appellate Authority under Section 45AA.

2.The Deputy Director/Authorised Officer
Under Section 45A, Regional Office,
Employees State Insurance Corporation,
Pondicherry. ... Appellants/Respondents

Vs.

M/s.Chemfab Alkalis Limited,
Pondicherry,
Represented by its Senior Manager (HR),
Mr.V.Kannappan. ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948, praying to set aside the order dated 28.07.2021 passed in E.S.I.O.P No.2/2017 on the file of the Employees State Insurance Court (Industrial Tribunal cum Labour Court), Puducherry.

For Appellants : Mr.C.Bharadwaj

For Respondent : Mr.Sai Prasad
for M/s.Sai Raj Associates

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Employees State Insurance Corporation challenging the order passed by the Employees State Insurance Court (Industrial Tribunal cum Labour Court), Puducherry in E.S.I.O.P No.2 of 2017 dated 28.07.2021.

2. The brief facts leading to the filing of the appeal are as follows:

(i) The respondent herein is a private company, which comes within the definition of 'Establishment' under the Employees State Insurance Act, 1948 ['ESI Act' in short] and covered with Code No.55-00-013366-000-0304 and they are required to pay contribution in accordance with Section 40 of the ESI Act r/w Regulation 29 and 31 of the Employees State Insurance (General) Regulations, 1950. The Social Security Officer has conducted inspection on the respondent factory on 03.12.2014 and 04.12.2014 for the contribution period from 2010-2011. Based on the inspection report of the Social Security Officer, a notice under Form C-18

(Adhoc) was issued to the respondent on 11.03.2015, calling upon them to personally appear and produce the documents for the determination of the contribution for a sum of Rs.10,44,377/-. The representative of the respondent Establishment appeared and the appellant Corporation has directed the Establishment to produce general ledger account, bills, vouchers and all relevant records for verification and after supply of the verification report, personal hearing was also offered on 11.05.2015 to the respondent Establishment. Thereafter, an enquiry was conducted and an order was passed under Section 45-A of the ESI Act to make contribution for a sum of Rs.2,27,460/- for the wage period 2010-2011.

(ii) Aggrieved over the order passed under Section 45-A of the ESI Act, the respondent Establishment has approached the Appellate Authority as per Section 45-AA of the ESI Act. The Appellate Authority, after conducting an enquiry, had passed an order dated 22.12.2015 under Section 45-AA, fixing the total contribution due from the Establishment at Rs.2,12,143/-. In the appeal, the Establishment has raised the question of limitation and the Appellate Authority has categorically observed in his order that the contribution cannot be determined for the wage period from

01.04.2010 to 22.06.2010 as this period is barred by limitation under the proviso to Section 45-A of the ESI Act. As per this provision, the contribution cannot be determined in respect of 45-A order dated 23.06.2015 for the above mentioned period. Thereafter, the Appellate Authority proceeded and fixed the contribution payable as Rs.2,12,143/-.

3. Assailing this order, the respondent Establishment approached the ESI Court and initiated Original Petition to set aside the above order of the Appellate Authority under Section 82(2) of the ESI Act. The ESI Court, after hearing both the parties, had held that since the contribution payable falls within the period of limitation, the Establishment is not liable to pay any contribution. The ESI Corporation took the plea before the ESI Court in their reply that the wage period determined does not fall within the period of limitation and it covers the period from 06/2010 to 03/2011, but it was negatived.

4. Aggrieved over the order of the ESI Court, this Civil Miscellaneous Appeal has been filed by the ESI Corporation on the following substantial question of law:

"Whether the ESI Court is justifiable in setting aside the entire order passed under Section 45AA of the Act when the core dispute putforth by the respondent is only with limitation for the period 4/10, 5/10, 01.06.2010 to 22.06.2010?"

5. I have carefully considered the submissions made on both sides and perused the materials available on record.

6. It is submitted by the respondent Establishment that the contribution payable prior to 22.06.2010 is barred under Section 45-A of the ESI Act. It is contended by the appellant Corporation that no proper bills were produced to show that the contributions were paid prior to 22.06.2010. Hence, the Establishment is liable to pay the contribution as determined by the authorities and the ESI Court has erred in quashing the entire order, when there are some portions of contribution to be payable, which falls after 22.06.2010.

7. On perusal of the order dated 22.12.2015 passed by the Appellate Authority under Section 45AA, it shows that he has fixed the contribution payable by the Establishment on two accounts:

(i) amount paid to M/s.Vincent and

(ii) amount paid to M/s.Vijaya Enterprises

As regards M/s.Vincent, the Appellate Authority in his order has observed as follows:

> *"**a) Amount paid to M/s.Vincent***
>
> *On verification of the records it is observed that a total amount of Rs.3,02,773/- was paid to this employer for the period upto 22-06-2010. The Authorized Officer considered 60% of the amount as wages while issuing the order which was accepted by the employer. As such the wages on Rs.3,02,773/- works out to Rs.1,81,664/- on which contribution due works out to Rs.11,809/- employer is not liable to pay this amount of contribution in respect of payment made to M/s.Vincent. As such the contribution already determined stands modified 133472-11809 = Rs.1,21,663/-"*

As regards M/s.Vijaya Enterprises, the Appellate Authority has observed as follows:

> *"**b) Amount paid to M/s.Vijaya Enterprises***
>
> *On verification of the records it is observed that an amount of Rs. 2,15,836/- was paid to M/s.Vijaya Enterprises upto the period 22-06-2010. The Authorized Officer while determining the contribution has considered 25% of the amount as wages. Likewise 25% works out to Rs.53,959/- and the*

contribution on this works out to Rs.3,508/-. The Authorised officer has determined the contribution as Rs.72,592/-. After deleting the contribution on the wages upto the period 22-06-10 the contribution due stands modified as 72592-3508 = Rs.69,084/-”

8. The order of the Appellate Authority shows that on 08.09.2015, the Establishment has raised certain objections and to examine their objections, the records were called for. On the next hearing, they have also produced their statement for the period April-10, May-10 and for the period 01.06.2010 to 22.06.2010. The Appellate Authority has also specifically recorded that the Establishment produced supporting bills and vouchers for the said period. Having held that the records have been produced and on satisfied that the contributions cannot be determined for the wage period 01.04.2010 to 22.06.2010, he has fixed the contribution made to M/s.D.Vincent and M/s.Vijaya Enterprises upto 22.06.2010. Except this, there is no specific finding or determination by the Appellate Authority that those amounts paid to M/s.Vincent and M/s.Vijaya Enterprises falls outside the limitation period. This has been properly appreciated by the ESI court and the contention that the Establishment has not produced the records, has

not been substantiated before the ESI Court. Based on the facts placed before the ESI Court by the Establishment, which were accepted by the Appellate Authority that the payments which were made to M/s.Vincent and M/s.Vijaya Enterprises falls within the period of 22.06.2010, the ESI Court has rightly considered the case and held that the contribution to be payable falls within the period of limitation and Section 45-A order could not be passed. Since only the factual aspects of the date of payments made is to be determined by appreciating the evidence placed on record and the Appellate Authority himself has accepted that the Establishment has produced all the bills and vouchers, this Court finds no question of law involved in this appeal.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed and the order passed by the Employees Insurance Court (Industrial Tribunal cum Labour Court), Puducherry in ESIOP No.2 of 2017 dated 28.07.2021 stands confirmed. There shall be no order as to costs.

28.06.2024

Index : Yes / No
Speaking Order : Yes / No

Neutral Citation : Yes / No
Lm

To
1.The Employees Insurance Court
(Industrial Tribunal cum Labour Court),
Puducherry.

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

K.RAJASEKAR,J.

Lm

Judgment made in
C.M.A.No.3568 of 2021

28.06.2024