BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.165 of 2012
and
M.P(MD)No.1 of 2012

M/s.Muruga Home Industries,
20/8, M.H.Complex,
S.N. High Road,
Tirunelveli-627 001,
Represented by its Managing Partner,
Radhakrishnan. ... Appellant/Petitioner

Vs.

Employees State Insurance Corporation,
Sub Regional Office (Tirunelveli),
Tirunelveli-1,
Represented by its Joint Director. ... Respondent/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 82 (2) of the Employees' State Insurance Act, 1948, to set aside the order, dated 24.11.2011 and made ready on 19.12.2011 passed by the Hon'ble Labour Court, Tirunelveli in E.S.I.O.P.No.5 of 2011 and allow the petition filed by the appellant as prayed for.

For Appellant : Mr.M.Jerin Mathew
for Mr.M.E.Ilango

For Respondent : Mr.C.Karthik

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in E.S.I.O.P.No.5 of 2011, wherein the appellant herein has filed a petition to set aside the order passed by the authorities and the same was dismissed and the order passed by the authorities under Section 85-B was confirmed.

2. **The brief facts of the case of the petitioner are as follows:**

The petitioner's Company is partnership concerned and manufacturing Beedi. The respondent has issued notice, dated 17.06.1985 in Form No.C11 and the petitioner also applied for exemption and appeared for personal appearance. Thereafter, the respondent issued letters to pay a sum of Rs.1,26,112/- for interest for the period of 12/86 to 12/96 and also Rs.1,17,329/- as interest for the period of 1/95 to 9/99 and the personal hearing was fixed on 17.11.2009. The petitioner also sent reply on 14.12.1999 and claimed to pay the interest, since the matters were pending before the Court. For the period 1/91 to 12/94, a sum of Rs.80,962/- was paid on 13.12.2002. The respondent without considering the reply, passed order through form No.ESI CP2, dated 31.12.2009 by demanding a sum of Rs.1,17,329/- for the period of 1/95 to 9/99 as interest and also demanded a sum of Rs.1,26,112/- for the period of December 1986 to December 1996 towards interest. The amount of Rs.80,962/- was not deducted. The order passed by the authorities is against law. Therefore, the order passed by the authorities are liable to be set aside.

3. <u>The brief averments of the counter filed by the respondent are as follows:</u>

The respondents calculated the interest for the period of December 1986 to December 1996 and sent Form No.C-18 to the petitioner. Similarly for the period of January 1995 to September 1999 fixed the interest of Rs.1,17,329/- and sent the Form C-18 to the petitioner. There was a typographical error as 12/1986 to 12/1996 instead of 12/1986 to 12/1990. But the interest was calculated only up to December 1990. As per Section 39 (5) of the ESI Act r/w Regulation 31 and 31-A, the petitioner is liable to pay interest. The *mens rea* is irrelevant. The petitioner ought to have paid the amount within 21 days. Therefore, the respondents have calculated the interest and the same is in accordance with law. Therefore, the petition is liable to be dismissed.

4. Before the Tribunal, on the side of the petitioners, no witnesses were examined and marked Exhibits P.1 to P.6 and R.W.1. On the side of the respondents also, no witnesses were examined and marked Exhibits R.1 to R.4.

5. After verifying the records, the ESI Court has dismissed the application by holding that since the petitioner failed to pay the contribution within the stipulated time is liable to pay the interest. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred by the petitioner.

6. The learned Counsel appearing for the appellant / petitioner filed written arguments and would contend that the authorities have passed order to pay interest for the period of December 1986 to December 1990 and January 1995 to September 1999. During that period, the petitioner has filed a petition for exemption and also filed petition before the Court by challenging the orders passed by the authorities. Immediately after the disposal of the petitions, they have filed the contribution amount. Therefore, claiming interest for the period as demanded is not sustainable and the Labour Court has failed to consider that the period of interest has to be excluded and there is no *mens rea* for the appellant to delay the payment. Therefore, the order passed by the Tribunal is liable to be set aside.

7. The learned Counsel appearing for the respondents would contend that as per Section 39 (5) r/w Regulation 31 and 31-A of the ESI Regulations, 1950, the appellant has to pay the interest for the delayed payment and the appellant ought to have paid the amount within 21 days from the date of salary, but they have failed to pay the amount within the time. Thereby, the authorities have passed order and issued Form C-18 for the interest amount. Therefore, the petitioner is liable to pay the said interest amount. The Tribunal also after considering all the aspects, dismissed the petition. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

8. This Court had heard both sides and perused the materials available on record. Upon hearing both sides and perusing the records, the point for determination in this appeal is:

i) Whether any substantial question of law is involved in this appeal and the appeal is to be allowed or not?

9. In this case, it is admitted fact that the appellant establishment filed exemption petition and the same was dismissed and thereby, it is covered under the ESI Act and the appellant has not paid the contribution within the time and they challenged the order passed by the ESI authorities and the petitions were filed by the appellant before the Labour Court and thereafter, the petitions were dismissed. After dismissal of petition only, they have paid the contribution. Therefore, as per Section 39 (5) of the ESI Act r/w Regulation 31 and 31-A of the ESI Regulations, 1950, the appellant is liable to pay the interest amount for the delayed payment. According to the appellant, they have no *mens rea* and since the matter is pending before the Court of law, the respondents are not entitled to interest for that period. The appellant also admitted that he paid the contribution only after the disposal of the petitions. Therefore, the appellant admitted the delayed payment. Since the litigation was pending the pendency of the litigation before the Court is not a ground to exempt the interest for the delay. The respondent Corporation has no right to reduce or raise the interest and no provision in the Act to consider the plea of the appellant.

10. According to the appellant that there is a calculation error in the interest amount. But the respondents admitted that there is a typographical error in the period of contribution. In the order period mentioned as 12/1986 to 12/1996 instead of 12/1986 to 12/1990, but interest was calculated till 12/1990. The appellant also issued reply for that and the same was also considered by the respondent Authorities. Therefore, the respondent Authority have passed orders for the interest due to the delayed payment. Already the respondents have issued notice to the petitioner and he also given opportunity. Therefore, the petitioner is liable to pay the interest amount for the delayed payment. Further the learned Counsel appearing for the appellant has relied the judgment of the Hon'ble High Court of Kerala in ***Regional Director, E.S.I Corporation Vs. Cannanore Spinning and Weaving Mills reported in 2001 (II) LLJ 1573,*** stating that during stay period they are entitled for exemption of interest.

11. On a careful perusal of the said judgment, it will not helpful to decide the case in favour of the petitioner but at the same time in the judgment of the Hon'ble High Court of Kerala, referred the judgment of the Hon'ble Supreme Court in ***Union of India Vs. Delhi Cloth & General Mills Company Limited and Another reported in 1997 (5) SCC 772***, wherein the Hon'ble Supreme Court held that, when challenge against notification or statutory amendment is repelled, the liabilities that are arising from the amendment shall be discharged by the person who is liable to pay and if there is any provision to charge instead, that shall also be paid. Even as per the judgment, the appellant is liable to pay interest for the stay period. The Tribunal also after elaborate discussion, fairly came to a conclusion that as per Section 39 (5) of the ESI Act r/w Regulation 31 and 31-A of the ESI Regulations, 1950, the petitioner is liable to pay the interest and the Hon'ble High Court also directed the appellants to pay the contribution amount by dismissing their previous appeal. Therefore, the order passed by the E.S.I Authorities and the order passed by the Labour Court are in accordance with law. Moreover, there is no any substantial question of law involved in this case.

12. In view of the above said discussions and considering that there is no any substantial question of law involved in this case, this Civil Miscellaneous Appeal is liable to be dismissed.

13. In the result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Labour Court,
Tirunelveli.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL, J.

BTR

C.M.A(MD)No.165 of 2012

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