BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.614 of 2012

ESI Corporation (SRO)
4th Main Road,
K.K.Nagar, Madurai – 20
Represented by its Director. ... Appellant/Respondent

-vs-

M/s.S.K.D.Lakshmanan Fire Works Industries
Represented by its Partner P.Palrajan (Died)
No.8, A.V.T.South Street,
Sivakasi District.

M/s.S.K.D.Lakshmanan Fire Works Industries
Represented by its Partner S.Balaji Pavanasam
S/o.Sivapiran
No.36, B, Velayutha Rastha
Sivakasi District- 626 123. ... Respondent/Petitioner

(Partner of the respondent industries is substituted
vide order of this Court dated 17.07.2023 made
in C.M.P(MD) No.6877 of 2023 in C.M.A (MD)
No.614 of 2012)

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I.Act, 1948, against the order of the Labour Court, Madurai passed in

E.S.I.O.P.No.37 of 2011, dated 27.09.2011.

For Appellant : Mr.N.Dilip Kumar
For Respondent : Mr.M.Jerin Mathew

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in E.S.I.O.P.No.37 of 2011, dated 27.09.2011 on the file of the E.S.I.Court, Madurai, wherein, the respondent herein has filed a petition before the Tribunal by challenging the order passed by the authority under Section 45-A of the E.S.I.Act and the petition was allowed by setting aside the order of the respondent authority and the matter was remanded back to the authority for fresh consideration. As against the order passed by the Tribunal, the present appeal has been preferred by the appellant.

2. The brief contents of the averments made in the petition before the Tribunal are as follows:

The petitioner concern is a partnership firm registered under the Indian Partnership Act under the name and style of M/s.S.K.D.Lakshmanan Fire Works Industries. The respondent sent a show cause notice to the petitioner dated 11.11.1999 calling upon him to submit the explanation as to why action should not be taken against the petitioner for not paying the arrears of contribution for the period from 1996 to 1998. Immediately after receipt of the notice, the petitioner appeared before the respondent and submitted a detailed reply dated 08.01.2000. But, the respondent without perusing the previous records, passed the interim order dated 14.11.2000 under Section 45-A of the E.S.I Act and the same was served to the petitioner on 01.12.2000. The petitioner is a sister concern of M/s.Anil Fire Works. While placing orders for the supply of chemicals, the Head Office i.e., M/s.Anil Fire Works placed the orders including for the requirement of their sister concerns and also instructed the suppliers to issue bills separately. In spite of that, the supplier used to issue bills in the name of the Head Office, even though the supply is made to the sister concern. The above said facts have been explained by the petitioner to the respondent. Further, the driver batta is concerned, the owner of the concern usually took the driver along with them during the stay at the outstation and the driver was paid for his food and lodge and other expenses. This amount was debited to the batta account, and the same will not come under the salary account. In respect of pasting of match box, the claim is M/s.Sri.Pabanas Tube Works prepared the paper rolls and supplied the same to the petitioner and they are maintaining their accounts separately. But, the respondent had wantonly omitted to take note of the same in the personal hearing with *malafide* intention. The petitioner is ready to produce all relevant records. The petitioner submitted the account books and documents. But, the respondent did not go through the documents and the claim of the respondent is illegal. The contribution of Rs.4,89,007/- (Rupees Four Lakhs Eighty Nine thousand and Seven only) is made for the period from April 1996 to March 1998. Hence, the order passed by the authority is liable to be set aside.

3. The brief averments in the counter filed by the respondent are as follows:

The petition is not maintainable. The petitioner has not come with clean hands and suppressed the material facts. The petitioner's concern is covered under the E.S.I.Act. The factory of the petitioner was inspected by the Deputy Director on 29.09.1999 and he reported that the employer has not paid contribution of Rs.37,301/- (Rupees Thirty Seven Thousand Three Hundred and One only) on omitted wages. On the basis of the report, notice under Form C-18 was issued to the employer on 11.11.1999 and the same was replied through letter dated 08.01.2000 by disputing the claim. Thereafter, C-18 notice was issued directing the employer to pay the amount within 15 days. The employer appeared for personal hearing on 10.10.2000 and has not shown any reasonable cause against the assessment of contribution as proposed by the respondent. Though the employer had availed opportunity, they did not produced any records. Thereby, the respondent passed the order dated 14.11.2000 under Section 45-A of the E.S.I.Act. The order passed by the respondent is in order and thereby, the petition is liable to be dismissed.

4. Before the Tribunal, on the side of the petitioner, no witness was examined and only marked documents Ex.P.1 to P.4. On the side of the respondent, they examined one witness R.W.1 and marked Exhibits R1 to R5.

5. After hearing both sides and perusing the records, the Tribunal has remanded the matter back to the authority for fresh consideration by holding that only in the order passed under Section 45-A of the E.S.I.Act, the respondent has stated that the petitioner has not filed any documents in support of the contention and that the respondent has not clearly discussed the matter with reference to the proposition laid down by the High Court and

circular of the respondent and has not decided the matter properly. Thereby, the petitioner can be given opportunity to substantiate the claim by filing documents. As against the order passed by the Tribunal, the present appeal has been filed by the E.S.I. Corporation on various grounds.

6. The learned counsel appearing for the appellant would contend that the respondent/petitioner have failed to contribute the ESI amount to the respondent for the employees and thereby, after due enquiry and after adopting the procedure contemplated under the Act, issued notice under Section 45-A of the E.S.I Act. In the order itself, it is clearly stated that opportunity was given to the petitioner. In spite of that, they have not produced any documents, but the Tribunal without considering the above said facts, erroneously remanded the matter back the case to the authority for fresh consideration. Therefore, the order of the Tribunal is liable to be set aside.

7. The learned counsel appearing for the respondent would contend that the order passed by the authority is without affording sufficient opportunity to the respondent/petitioner. In fact, the respondent/petitioner has produced so many documents before the authority. But, those documents have not been

discussed by the authority and without perusing those documents, the authority simply passed the order stating that the petitioner has not produced any documents. Thereby, the Tribunal has passed the order to remand the matter for fresh consideration to the authority concerned. Therefore, the order passed by the Tribunal is in order and the present appeal is liable to be dismissed.

8. This Court, after hearing the learned counsel appearing on either side and perused the records including the order of the Tribunal, frames the following point for determination in this appeal:

(i) Whether the appeal is liable to be allowed or not?

9. In this case, there is no dispute that the respondent/petitioner Company is covered under the E.S.I.Act. The appellant/respondent issued notice under Section 45-A of the E.S.I. Act for the contribution of amount from the year April 1996 to March 1998. According to the appellant, the appellant already issued show cause notice and the same was replied by the respondent and thereafter, again, the petitioner was given opportunity and after giving ample opportunity only, the order was passed under Section 45-A

of the E.S.I. Act.

10. According to the respondent, at the time of personal hearing, they produced so many documents. But those documents have not been relied upon by the appellant and they have not been discussed in the impugned order. Moreover, the order reveals that the petitioner had not produced any documents to prove the contention of the respondent.

11. This Court, upon careful perused all the documents including the impugned order, finds that the petitioner has not produced any documents. But according to the petitioner, he already produced the documents and the same have not been considered by the appellant. Further, according to the respondent, the petitioner's Company is a sister concern i.e., M/s.Anil Fire Works and M/s.Sri.Pabanas Tube Works is a sister concern of the petitioner's firm and M/s.Sri.Pabanas Tube works have got their own factory and they had separate workmen to do the work.

12. Further, it is the contention of the respondent that the petitioner authority wantonly and wilfully omitted to take note of the records submitted

by them and the separate E.S.I. Code No.28090 was allotted to M/s.Sri Pabanas Tube Works and the E.S.I. contribution has been deducted, but the same has not been verified by the appellant order under Section 45-A of the E.S.I.Act. The respondent/appellant has stated that the petitioner had not filed documents in support of their contention. Thereby, the Tribunal has remanded back to the matter for fresh consideration to give opportunity to the respondent for filing the documents. Therefore, the order passed by the Tribunal is in order and there is no infirmity or perversity found in the order of the Tribunal.

13. The learned counsel appearing for the appellant would submit that the Tribunal itself can decide the matter by giving opportunity to the parties to produce the documents, instead the Tribunal has remanded the matter back to the authority and the same is erroneous. To support this contention, he relied upon the judgment of this Court in ***C.M.A.(MD) No.842 of 2012 (the E.S.I. Corporation, represented by its Deputy Regional Director vs. Madras Cement Limited, Represented by its General Manager (Admin))***

14. On careful perusal of the above said judgment, it will not be applicable to the present facts of the case as it is distinguishable from the

facts of this case.

15. The learned counsel appearing for the appellant has relied upon the judgment of the Hon'ble Supreme Court ***(Shivakumar and others vs.Sharanabas Appa and others)*** reported in (***2021) 11 SCC*** *277* and (***Sirajudheen Vs Zeenath)*** reported in ***(2023) SCC Online SC 196.***

16. On careful perusal of the above said judgments, they will not be applicable to the present fact of the case and because those cases are arising out of the Civil Appeal under the C.P.C and here, the appeal is arising out of E.S.I.Act and therefore, both the procedures and the Acts are different and thereby, the above said citations are not helpful to the case of the appellant.

17. In view of the above said discussions, this Court is of the opinion that there is no merit in this appeal and it is liable to be dismissed. Considering the nature of appeal it is appropriate to direct the appellant to complete the process within a period of three months from the date of receipt of a copy of this order.

18. With the above said direction, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to costs.

08.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Labour Court,
Madurai.

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

P.DHANABAL,J.

ebsi

C.M.A(MD)No.614 of 2012

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