BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2024**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.93 of 2022

1. The Assistant Director (INS-II),
The Employees State Insurance Corporation,
Sub-Regional Officer, 4th Main Road,
K.K. Nagar, Madurai – 625 020.

2. The Joint Director,
The Employees State Insurance Corporation,
Sub-Regional Officer, 4th Main Road,
K.K. Nagar, Madurai – 625 020. ... Appellants

Vs

M/s.Paul Rail Infractures Pvt. Limited,
Through its Works Manager, Tr. J.
Shankaran, Railway Yard, Thirumangalam,
Madurai-625 706. ... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the Fair order and Decretal order passed in E.S.I.O.P.No.122 of 2008 dated 20.07.2021 by the E.S.I Court (Labour Court) Madurai.

For Appellant: Mr.C.Karthik

For Respondent: Mr.A.Jegatha

JUDGEMENT

The Employees State Insurance Corporation is the appellants herein, had filed this appeal praying to set aside the order passed in E.S.I.O.P.No.122 of 2008, dated 20.07.2021 by the E.S.I Court (Labour Court) Madurai.

2. The brief facts are that the respondent herein is a registered company under the Companies Act 1956 dealing in manufacturing and supplying of concrete sleepers for Southern Railways for lying the railway tracks. The contention of the respondent herein is that they are paying Provident Fund and also paying medical expenses through the Insurance Company from the year 2007 to 2008 and had paid ESI contribution from January 2008 to September 2008. The company has not come within the purview of ESI Act up to December 2007. But the 1st appellant herein had visited the factory for inspection and allotted ESI Code on 24.01.2008 and the respondent herein is paying contribution thereafter from January 2008 to September 2008 and time to time. But the appellant herein had

passed an order dated 06.10.2008 demanding Rs.2,05,936/-. Since the respondent paying medical allowances from January 1998 to December 2007, after receiving ESI Code the respondent paying contribution, the respondent claimed the said amount is not payable for the previous period. But the appellant had passed demanding the said payment stating that the said amount is payable from the date of coverage i.e. from 01.10.2007. The respondent challenged the same before Tribunal and the same was allowed. Aggrieved over the same, the appellants have filed the present appeal.

3. The contention of the ESI Corporation is that the Ministry of Labour, Government of India, vide its notification bearing No.S-38013-26-2007-SSI dated 17.09.2007 had notified in the Gazette of India that ESI Scheme would be implemented in Tirumangalam area with effect from 01.10.2007. As the respondent did not initiate any action to cover the workers under the ESI Scheme with effect from 01.10.2007, therefore, the first appellant has sent a notice in Form C-18 proposing to levying regular contribution of Rs.2,05,936/- for the period from 01.10.2007 to 31.12.2007. The respondent is liable to pay the contribution as per Section 45(A) of the ESI Act, since the respondent has not paid contribution for the period from 01.10.2007 to 31.12.2007, but started paying

ESI contribution with effect from 01.01.2008, hence in order to recovery the said amount proceedings were initiated. The respondent company cannot claim any exemption from the statutory payment.

4. The learned Counsel for the ESI Corporation relied on the judgment rendered in Mosaic Industries Pvt. Ltd. Vs. ESI Corporation reported in ***2008-III-LLK-436 (Kar)*****,** wherein, it is held that if the unit has become defunct since last 15 years the same cannot be reason for not paying the contribution. The employer is liable to pay as and when the same become due.

5. The learned Counsel for the respondent company relied on the judgment rendered by Hon'ble Supreme Court in ESI Corporation Vs. Distilleries & Chemicals Mazdoor Union and others reported in ***(2006) 6 SCC 604*** wherein it is held that directing the employer to pay prospectively is legally valid.

6. After hearing the arguments, this Court is of the considered opinion that when the notification was issued with effect from 01.10.2007, until then the respondents have provided medical facilities and had paid medical allowances, then again, the respondent company cannot be made liable to pay the said

contribution. Moreover, the appellants have brought the respondents under the purview of the ESI Act from 24.01.2008 and hence the respondents are liable to pay the contribution prospectively only. Further for the past period from December 2007 the respondents had contributed in Provident Fund and had granted medical facilities through Insurance Company. In such circumstances, the respondent company cannot be saddled with the contribution for the same period. The said conclusion is supported by the aforesaid judgement rendered by the Hon’ble Supreme Court in ***ESI Corporation Vs. Distilleries’s case.***

7. Therefore, this Court is of the considered opinion that the impugned order is legal valid. The substantial question of law is answered in favour of the respondent and against the appellant. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

28.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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S.SRIMATHY, J.

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To

1. E.S.I Court (Labour Court), Madurai.

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

Order made in
C.M.A(MD)No.93 of 2022

28.03.2024