



C.M.A(MD)No.178 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.01.2024

CORAM

THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.178 of 2021

The Employees' State Insurance Corporation,
Sub-Regional officer,
2nd Main Road,
K.K.Nagar (West),
Madurai -20,
Represented by its Deputy Director.

... Appellant

Vs.

M/s.Sivaraj Spinning Mills,
Kiriyaampatti,
Thadicoombu,
Dindigul District,
Represented by its Chief General Manager.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 of the Employees State Insurance Act, 1948, against the Order, dated 27.08.2019 of the Labour Court (Employees' State Insurance Court or, in short, ESI Court), Madurai in E.S.I. O.P No.61 of 2011.

For Appellant : Mr.R.Ravindran

For Respondent : Mr.K.Hemakarathikeyan



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JUDGEMENT

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The Civil Miscellaneous Appeal is filed by the Employees' State Insurance Corporation, against the Order, dated 27.08.2019 passed in E.S.I. O.P No.61 of 2011.

2. The Respondent is the Appellant and the Petitioner is the Respondent herein. For the sake of convenience, the contesting parties shall be referred based on the ranking in the original petition as Petitioner and the Respondent.

3. The petitioner's Mill has filed a petition in E.S.I O.P No. 61 of 2011, challenging the order dated 22.07.2011, which imposed interest on belated payment of Employees' State Insurance Corporation. The petitioner's Mill had filed writ petition in W.P.No.23928 of 2007 for writ of Mandamus forbearing respondents from implementing the ESI scheme without providing the facilities and amenities and the said writ petition was dismissed on 03.10.2007. On dismissal of the writ petition the petitioner mill was liable to implement the ESI scheme. Thereafter along with several other mills the petitioner mill had filed clarification



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petition in M.P.No.1 of 2008 in W.P.No.23928 of 2007 for clarification.

The clarification petition was filed stating that the notification was under challenge from the year 2002 and later on by various employees in the year 2007, hence the contribution was not made during the pendency of the writ petitions and now if the management/employees are directed to pay the contribution there will be great hardship.

4. The Hon'ble Supreme Court in ***ESI Corporation Vs Jardina Hendarson Staff Association reported in (2006) 6 SCC 581 and ESI Corporation Cs. Distillaries & Chemical Mazdoor Union reported in (2006) 6 SCC 604*** have upheld the order of the Calcutta High Court and Allahabad High Court directing payment of ESI Contribution prospectively i.e. from the date of the judgment rendered by the respective High Courts. Hence prayed to direct to make contribution towards ESI only from the date of judgment and not from the date of notification. The Hon'ble Court vide order dated 08.07.2008 had directed the management / employees to make contribution from the date of the order dated 03.10.2007. Based on the order dated 08.07.2008 the petitioner mill had paid the amount on 28.07.2008 with the period of 21



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days. But the respondent corporation had imposed interest as if the petitioner mill had paid the contribution belatedly.

5. Now the contention of the Petitioner's mill is that they have paid the ESI contribution from the date of the Order of Clarification, dated 08.07.2008. Therefore, the Mill is not liable to pay interest. Such contention of the petitioner's mill is not acceptable. When the Hon'ble Court had clarified that the implementation of ESI is from 03.10.2007 onwards, then the petitioner mill is liable to pay from the contribution from 03.10.2007. Even though the cut-off date is fixed in the clarification petition dated 08.07.2008, but when the cut-off date is fixed from 03.10.2007 then the petitioner mill is liable to pay the interest.

6. The interest is imposed through statutory provisions on belated payment which is automatic. In case of penalty alone, the Courts ought to see whether it is deliberate or not since the penalty is not an automatic. Therefore, the Court below had erred in finding.



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7. Accordingly, the petitioner's Mill is directed to pay interest to the Respondent Corporation for the belated payment, within a period of Four weeks from the date of receipt of a copy of the Order.

8. With these observations and directions, this Civil Miscellaneous Appeal is allowed. No costs.

04.01.2024

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

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To

1. The Deputy Director
The Employees' State Insurance Corporation,
Sub-Regional officer,
2nd Main Road,
K.K.Nagar (West),
Madurai -20,

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



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S.SRIMATHY, J.

KSA

Order made in
C.M.A(MD)No.178 of 2021

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