



C.M.A.(MD).No.424 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2024

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.424 of 2021

The Deputy Regional Director,
The Employees' State Insurance Corporation,
Sub-Regional Office, 4th Main Road,
Madurai – 20. ... Appellant/Respondent

Vs.

M/s.Eastman Spinning Mills (P) Ltd.,
represented thro' its General Manager,
Viruthalaipatty,
Vedasanthur,
Dindigul District. ... Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 82(2) of Employees State Insurance Act, to set aside the order, dated 10.07.2019, passed by the ESI Court (i.e., Labour Court), Madurai in E.S.I.O.P.No.22 of 2012 and permit the appellant to charge ESI Contributions for the past period from 01.04.2004 to 30.09.2006 for Rs.24,77,475/-.

For Appellant : Mr.R.Ravindran

For Respondent : Mr.R.S.Pandiyaraj



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JUDGMENT

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This appeal has been filed to set aside the order, dated 10.07.2019, passed by the ESI Court (i.e., Labour Court), Madurai in E.S.I.O.P.No.22 of 2012 and permit the appellant to charge ESI Contributions for the past period from 01.04.2004 to 30.09.2006 for Rs.24,77,475/-.

2.The facts in brief:

The Deputy Regional Director, namely the respondent in the main petition, who is the appellant herein issued the proceedings in No. 57/00-047557-000-000-0101/ INA.1/SRO/MDU/33/07, dated 19.10.2011, assessing what is the contribution of Employees State Insurance ad hoc basis at Rs.24,77,475/- from April 2004 to September 2006. For which, the respondent herein submitted explanation on 19.12.2011. But, final order was passed. It was challenged under Section 75 of the Act in E.S.I.OP.No.58 of 2008 before the ESI Court namely Labour Court, Madurai. In that petition, order was passed directing the appellant herein to consider the bonafide of the plea raised. Employees provided with medical benefits on par with the Government Employees. In a judgment in W.P.No.22370 of 2007 made clarification that ESI



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contributions could not be claimed before the month of October 2007.

On that date the above writ petition was dismissed. On that ground it was submitted by the respondent that show cause notice issued is not valid. The employees claim the contribution beyond the limitation period when proper records only on Assessment order was passed in violation of Section 45A of ESI Act. So the contributory claim by the appellant herein is not valid under law.

3.That was resisted by the appellant herein by filing counter stating that the respondent unit covered under the ESI Act to the effect from 01.04.2004. Writ petition in W.P.No.242 of 2004 was filed by the respondent unit, before the Madurai Bench of Madras High Court, that was dismissed on 20.09.2005. Another writ petition filed by the workers union, in W.P.No.25279 of 2006, was disposed of with a direction. Similarly petition was filed in W.P.No.289 of 2006. The same was also disposed of. Only based upon the above said order, show cause notice was issued for the period from 01.04.2004 to 31.12.2007.

4.Against that order, ES.I.O.P.No.52 of 2008 was filed to quash



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the proceedings. The matter was remitted back as mentioned above. After remand, the order was passed claiming contribution of Rs.24,77,475/-.

ESI scheme is mandatory one and no option is available either to the employer or to the workers. If the respondent unit provided medical and other benefits to the workers, then they ought to have applied to the Government seeking exemption under Section 87 of the Act. No such Exemption Petition was filed.

5.The ESI dispensary at Vedasandur was opened on 01.11.1999, still it is functioning. The respondent herein did not pay the ESI contribution. The particulars of employees were not submitted. In respect of the show cause notice 11.06.2008 negotiations will not arise because of pendency of writ petition.

6.After hearing both sides, the labour court namely ESI court, Madurai, allowed the petition filed by the respondent herein and the notice issued by the appellant was set aside. Against which, this appeal is preferred by the ESI corporation.



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7. Heard both sides.

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8. At the time of hearing, the order passed by the co-ordinate bench of this court in C.M.A.(MD)No.686 of 2019 was placed on record by the appellant himself and these are the main objections, which is mentioned in the preamble portion namely W.P.(MD)No.24080 of 2006 & W.P.(MD)No.24848 of 2007 and in that order judgment of the Honourable Supreme Court in the case of ***Employees State Insurance Corporation Vs. Jardine Henderson Staff Association*** reported in 2006-6-SCC 581 was referred. The judgment of the Honourable Supreme Court was on the point that ESI contribution can be claimed only from the date of dismissal of writ petition and not earlier to that.

9. Reading of the order as relied by the co-ordinate Bench of this court, it is seen that the Corporation can claim the contribution only from the date of dismissal of the writ petition and not earlier to that. We will go to the order passed by the labour court on that aspect. It was stated before the ESI court by the respondent that it is providing medical benefits to his employees on par with the Government Employee. But, it



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is the finding by the labour court that no documentary evidence was produced as stated in the counter affidavit filed by the appellant herein. If the respondent wants exemption from the coverage, they ought to have approached the Government by invoking Section 87 of the Act. But, they have failed. So that ground is not available to the respondent. It was rightly held by the labour court.

10.W.P.No.242 of 2004 was filed by the respondent herein, which was dismissed on 20.09.2020. Later, in a clarification in M.P.No.1 of 2012 in W.P.No.22367, 22374 and 24848 of 2007, the following clarificatory order was passed.

“Thus, considering the above facts and circumstances and considering the judgments cited above, I am inclined to direct the management as well as the employees of the respective petitions to make contribution towards ESI from the date of the order viz., 03.10.2007. All the applications are ordered accordingly.”

11.From the clarificatory order, it is seen that the appellant was directed to claim the contribution only from 03.10.2007 and not earlier to



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that.

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12.By pointing out this order, ESI court, stated that clarificatory order attained finality, since no further steps was taken by either of the parties against that order.

13.On that score, it is held that the appellant claimed contribution only from 03.10.2007. So notice issued by the appellant is not legal. I find absolutely no ground made out by the appellant herein to interfere the order passed by the ESI Court. The order passed by the labour court, requires no reconsideration. The appeal fails.

14.Accordingly, this civil miscellaneous petition stands dismissed. No costs.

16.07.2024

Index : Yes / No

Internet : Yes / No

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To

1.The Special Sub Judge, Special Sub Court dealing with MCOP Cases,
Motor Accident Claims Tribunal, Tirunelveli.

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G.ILANGOVAN,J.

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2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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