

Court No. 6
(265719)

14.07.2025
(AD 10)
(S. Banerjee)

CO 3825 of 2024

M/s. Rudra Automobiles Pvt. Ltd.
Vs.
Employees State Insurance Corporation
with
CAN 1 of 2024

Mr. Ranjay De, Sr. Advocate
Mr. Uddipan Banerjee
Mr. Subhrakanti Samanta
Mr. B. Banerjee
Mr. A. A. Bose

...for the petitioner

Mr. Subal Maitra
Mr. Arindam Maitra

...for the ESIC/opposite party

This application under Article 227 of the Constitution of India is at the instance of the principal employer and is directed against an order being no. 9 dated September 30, 2024 passed by the learned Judge, Employees Insurance Court, Calcutta in Tender Case No. 19 of 2024.

The Assistant Director, Employees State Insurance Corporation passed an order dated October 11, 2023 under Section 45A of the ESI Act, 1948 thereby holding that contributions amounting to Rs. 13,20,84,404/- (Rupees Thirteen Crore Twenty Lakh Eighty Four Thousand Four Hundred and Four Only) for the period from September, 2018 to March, 2019 to be the final determination

and the petitioner being one of the principal employers was ordered to pay the said amount within the time limit specified in the said order failing which the amount will be recovered under the relevant provisions of the ESI Act.

The petitioner preferred an appeal against the aforesaid order before the appellate authority under the provisions of Section 45AA of the 1948 Act.

The appellate authority, by an order dated February 27, 2024, dismissed the said appeal as the petitioner failed to comply with the requirement of pre-deposit as per Section 45AA of the 1948 Act. The order of the appellate authority was challenged by the petitioner by approaching the Employees Insurance Court under the provisions of Section 75(1)(g) of the 1948 Act. The Employees Insurance Court, by the order impugned, dismissed the ESI Tender Case No. 19 of 2024 which was subsequently registered as ESI Case No. 95 of 2024.

Mr. De, learned Senior Advocate, appearing for the petitioner submits, on instruction, that the petitioner is now ready and willing to comply with the provisions of Section 45AA of the 1948 Act by making the pre-deposit before the appellate authority. He submits that the Employees

Insurance Court, even after holding that the order passed under Section 45A was not legal and valid, did not remand the matter to the original authority.

Mr. Maitra, learned advocate representing the ESI authority, submits that the Employees Insurance Court was justified in rejecting the tender case as the petitioner did not fulfill the pre-conditions under Section 45AA of the 1948 Act.

Heard the learned advocates for the respective parties and perused the materials placed.

Section 45AA of the 1948 Act states that *if an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five percent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation. Proviso thereto states that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation.*

Mr. De, learned Senior Advocate, appearing for the petitioner, would contend that the petitioner

prayed for waiver of such pre-condition before the appellate authority.

This court finds that there is no provision under the said statute for waiver of such pre-deposit. However, since the petitioner is now ready and willing to comply with the provisions of Section 45AA by depositing 25 per cent. of the contribution so ordered, this court is of the considered view that the petitioner should be given an opportunity to have the appeal before the appellate authority, heard out on merits.

This court is, therefore, of the considered view that if the petitioner deposits 25 per cent. of the contributions as finally determined by the order passed by the original authority under the provisions of Section 45A of the 1948 Act, the appellate authority shall decide the appeal on its own merit without going into the issue of limitation.

In view thereof, CO 3825 of 2024 stands disposed of by directing the petitioner to deposit 25 per cent. of the contributions so ordered by the original authority in the order passed under Section 45A of the 1948 Act, within a period of three weeks from the date of receipt of the server copy of this order and upon such deposit the appeal filed by the petitioner under the provisions

of Section 45AA of the Act shall stand restored to the file of the appellate authority and the appellate authority shall decide the said appeal on its own merit in the light of the observations made above. The order passed by the Employees Insurance Court is set aside.

It is, however, made clear that in the event the petitioner fails to comply with this order within the time limit indicated hereinbefore, this order shall stand recalled and the order passed by the Employees Insurance Court on September 30, 2024 in Tender Case No. 19 of 2024 (subsequently renumbered as ESI Case No. 95 of 2024) shall automatically stand revived without any further reference to this court.

In view of the aforesaid order, CAN 1 of 2024 stands disposed of.

(Hiranmay Bhattacharyya, J.)