IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 913 of 2023
AND
CMP NO. 8453 OF 2023

1. The Deputy Director
Employees State Insurance Corporation, Sub
Regional Office, D.No.1897, Trichy Road,
Ramanathapuram, Coimbatore - 641045.

2. The Additional Commissioner and R.D
Appellate Authority, Employees State Insurance
Corporation, Sub Regional Office, D.No.1897,
Trichy Road, Ramanathapuram,
Coimbatore - 641045.

Appellants

Vs

M/s.Vennila Clothing Company
(Cotton Park) No.432, Nethaji Road,
Opp. to Trichy Cafe, Erode. Rep. by its
DGM-HR K.Mohan

Respondent

PRAYER:-Civil Miscellaneous Appeal filed under Sec.82(2) of Employee State Insurance Act, praying to set aside the Fair Order and Judgment passed in EIOP

No.53 of 2020 dated 24.08.2022 in partly allowing the petition by setting aside the order passed under section 45A of ESI Act dated 29.03.2019 and remanding the matter back to the Respondent Authority to conduct enquiry afresh and determine the actual contribution on the file of the Employees State Insurance Court, Coimbatore.

For Appellants: Mr.S.P.Srinivasan

For Respondent: Mr.D.Udhayasuriyan

JUDGMENT

Challenging the impugned order passed by the Employees State Insurance Court, Coimbatore in ESIOP No. 53 of 2020, the appellants/respondents 1 and 2 have preferred this Civil Miscellaneous Appeal.

2. Before the Employees State Insurance Court, the respondent herein viz., M/s.Vennila Clothing Company filed a petition in ESIOP No. 53 of 2020 under Sec.75 of ESI Act, 1948 and prayed to pass an order by setting aside the order No.5656-101028-018-1002/INS-IV/SRO/5064/2018-II, dated 29.03.2019 to an extent of Rs.2,72,201/- as lacking jurisdiction, without authority of law, illegal and in any event unjustifiable.

3. For the sake of convenience, the parties are ranked as per the ranking in the Original Petition.

4. Brief facts of the case is as follows :-

The petitioner viz., M/s. Vennila Clothing Company, represented by its DGM-HR contended that they had a clothing showroom of sale of cloth, knitted hosiery garments. For that, ESI Corporation allotted code No. as 56561010280181002 with effect from 01.02.2014. At that time, only nine employees were working in the petitioner's unit and the said unit was functioned from February 2014 to August 2014. After that, nine employees left the service and their CST No.334764 and TIN No.33382323760 was also been cancelled by the Assistant Commissioner, since there was no business activities from September 2014 onwards. But, the 1st respondent ESI Corporation issued a notice on 13.12.2018 demanding a sum of Rs.2,72,201/- from the petitioner for the ESI contribution for the period from October 2014 to September 2019. The petitioner contended that the unit was not functioned from September 2014 onwards and a letter was also sent by the employer to the Commercial Department for closure of unit and the cancellation of TIN number. Hence, the petitioner's unit was not functioned from September 2014 legally. So, the petitioner is not entitled to pay ESI contribution, since no wages was paid for the period from September 2014 to September 2018. Therefore, the said impugned notice issued by the 1st respondent demanding contribution of Rs.2,72,201/- for the period from October 2014 to September 2019 was under challenge before the Employees State Insurance Court in ESIOP No. 53 of 2020.

5. The said petition was contested by the respondents stating that the petitioner's company was registered under Employees State Insurance Act voluntarily by the petitioner through online and the sub-code was allotted and till September 2014, the petitioner submitted ESI payment. But, subsequently stopped payment from October 2014 due to online processing method. Hence, the petitioner committed default in payment of contribution for the period of October 2014 to September 2018. Accordingly, the notice was issued on 13.12.2018 directing them to remit the said contribution within 30 days. By way of reply, the petitioner wrote a letter stating that company was closed in the year 2014 and needs some time to produce relevant records. Hence, the opportunity

was given upto February 2019 and personal hearing is also given to the petitioner at their request in the month of January 2019 and February 2019, but they has not produced any relevant records, however, one authorised representative Vadivelu appeared and submitted a letter stating that related documents could not be traced out. Accordingly, the respondent authority passed an order under Sec.45A of ESI Act determining the contribution of Rs.2,72,201/- for the wage period from 01.10.2014 to 30.09.2018 on assumed notional wages basis.

6. Being aggrieved that, the petitioner preferred an appeal under Sec.45AA before the appellate authority of the respondent corporation, but failed to deposit 25% of contribution amount. Hence, the appeal was rejected. Thereafter, the present petition was filed under Sec.75 of Employees State Insurance Act to set aside the interim order. Both parties adduced documents, but no oral evidence was adduced. On considering the documents, the learned judge has come to a conclusion that functioning of the petitioner's unit was not established and the respondent also not proved that the petitioner's unit was still running through out the wage period. Therefore, the impugned order was set

aside and the matter was remanded back to the respondent authority to conduct fresh enquiry by giving opportunity to the petitioner to file documents regarding closure of petitioner's unit and determine the actual contribution, which is liable to be paid by the petitioner. Challenging the said order, the appellant Insurance Corporation had preferred this Civil Miscellaneous Appeal.

7. The learned counsel for appellant Insurance Corporation would submit that sufficient opportunity was given to the respondent company at the time of enquiry proceedings under Sec.45A of Employees State Insurance Act. The respondent herein sent one representative viz., Vadivelu and at his request, on several occasions, the enquiry was adjourned, but the documents preferred by the respondent authority in order to prove the closure of unit from September 2014 was not produced. As per the contention of the respondent company, the closure of unit was made from September 2014 onwards. So, the initial burden is casted upon them to prove that the unit was closed and the same was intimated to ESI Authority. Though the respondent contended about the closure of unit to the appellant herein, but no such document was produced on the side of respondent. Therefore, till issuance of notice in the year 2018, there is no

proof that the respondent had given proper intimation about the closure of unit. Hence, they prayed to set aside the order passed by Employees Insurance Corporation Court.

8. Heard both sides. Considering both side submissions and considering facts and circumstances of the case, this Civil Miscellaneous Appeal is admitted on the following question of law :-

(1) Whether the order of Employees State Insurance Court in allowing the ESIOP No. 53 of 2020 by setting aside the order passed under Sec.45A dated 29.03.2019 and remanding the matter back to the 1st appellant and directing them to ascertain whether the closure of the unit was on September 2014 and thereafter, determine the contribution afresh is justified and sustainable under ESI Act?

(2) Whether Employees State Insurance Court has overlooked the fact that when the respondent could not conclusively prove by way of documentary evidence, the date of closure on September 2014, how could it again prove closure of unit on September 2014?

9. Admittedly, the appellant Insurance Corporation also admits the fact that the unit was closed from September 2014. Therefore, they need not produce

any further records to that effect. But, admittedly, as per Sec.45A of Employees State Insurance Act, the appellate authority directed one Vadivelu, who had appeared on behalf of respondent company as a representative to produce the records with regard to closure of unit from September 2014 onwards. But, inspite of opportunity, he has not produced any document. Therefore, under Sec.45A proceedings, the Employees State Insurance Court rightly passed an order to pay contribution. Furthermore, ample opportunity was given to the respondent company to produce the records, but they have not produced. Under such circumstances, again the matter to be remanded back to the Employees State Insurance Corporation for fresh consideration made by the said Employees State Insurance Court is unwarranted. Already sufficient opportunity was given to produce those documents, but the respondent company failed. Even during the trial before the Employees State Insurance Court, the respondent not produced any document nor established that they gave proper intimation to Employees State Insurance Corporation about the closure of unit. Therefore, the findings rendered by the Employees State Insurance Court is liable to be set aside. Accordingly, the question of law (1) and (2) are answered.

10. As there is no proof on the side of respondent company that the unit was closed from September 2014, the contribution demanded as per the interim order as such is sustainable. Therefore, the respondent company is directed to pay contribution amount of Rs.2,72,201/- as per the notice dated 13.12.2018 within a period of twelve weeks from the date of receipt of copy of this judgment.

11. In the result, the findings rendered by Employees State Insurance Court in ESIOP No. 53 of 2020 is set aside and this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

08-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To
1. Employees State Insurance Court, Coimbatore.

2. Section Officer, VR Section, Madras High Court.

T.V.THAMILSELVI J.

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