



**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO-4009-2015 (O&M)
Date of decision : 07.01.2025**

M/s. Tupperware India Pvt. Ltd.

..... Appellant

versus

Employees State Insurance Corporation and another... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ajay Ghangas, Advocate and
Mr. Devender Kumar Kataria, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

PANKAJ JAIN, J. (Oral)

1. Instant appeal is directed against order dated 25.02.2015 passed by ESI Court on a petition filed by the establishment under Section 75 of the ESI Act.

2. The appellant was served with the demand notice by the ESI Court in Form C-18 dated 27.06.2002, whereby they were asked to make a payment of Rs.21,90,948/- towards contribution of the omitted wages for the period commencing from March 2000 till August 2000 and thereafter upto February 2002. The action of the ESI authorities was impugned by the appellant claiming that the contribution demanded relates to the period when the establishment was not covered under the provision of ESI Act and that the demand raised was beyond period of limitation as prescribed under Section 77 of ESI Act. The appellant thus, prayed for recovery of Rs.33,76,698/- alleged to have been



wrongly charged by the ESI Corporation alongwith interest.

3. The matter was contested by the Corporation justifying the demand and the recovery. On the basis of the pleadings, ESI Court framed following issues:-

1. Whether the present petition has been filed by a duly authorised person? OPP.
2. Whether the recovery of Rs.33,76,698/- by the respondent No.1 is illegal, unlawful, void, ab-initio, against the principle of natural justice and is liable to be declared so on the grounds mentioned in para No.12 of the petition? OPP.
3. Whether the notice dated 14.2.2007 to levy damages is illegal, unlawful, against the principle of natural justice, void and is not binding upon the petitioner? OPP.
4. Whether the petitioner is entitled to recover the amount from respondent No.2 as alternative relief as prayed for? OPP.
5. Whether the petition is not maintainable in the present form? OPR.
6. Whether the petitioner has no locus-standi to file the present petition? OPR.
7. Whether this court has no jurisdiction to try and decide the present petition? OPR.
8. Whether the petitioner has no cause of action to file the present suit? OPR.
9. Whether the petitioner has not paid proper court fee on the valuation of contribution? OPR.”

4. Answering issue No.2, 3 and 4 in favour of the appellant, the ESI Court held as under:-

“It can be very safely concluded that there is nothing on record to rebut the evidence of the petitioner and that the amount charged by the EST amounting to Rs.33,76,698/- from the respondent No.1 is illegal, sunlawful, void, ab initio, against the principle of natural Justice and is liable to be declared so on the grounds mentioned in para No. 12 of the petition and the notice dated 14.2.2007 to levy damages is declared illegal, unlawful, against the principle of natural justice, void and is not binding upon the petitioner. The ESI is



thus directed to reverify the matter and adjust the amount against future payment of the petitioner company towards the ESI. Hence, these Issues are decided in favour of the petitioner.”

5. However, while framing relief, ESI Court observed that though the amount charged by the ESI Corporation amounting to Rs.33,76,698/- from respondent No.1 (appellant herein) was illegal, unlawful, void, ab-initio and against the principles of natural justice, yet the ESI is directed to re-verify the matter and adjust the amount against future payment of the appellant towards ESI.

6. It is the aforesaid observations which has led to the assessee to file the instant appeal. Mr. Ghangas while assailing the impugned order passed by ESI Court submits that once the demand of the recovery itself stand declared as illegal, unlawful, void, ab-initio and against the principles of nature justice, yet ought not have allowed the ESI to retain the amount on the pretext of re-verification of the matter and adjusting thereof against future payment of the appellant.

7. Mr. Talwar fairly admits that so far as ESI Corporation is concerned, no appeal has been preferred. Thus, findings on issue No.2 to 4 have attained finality. However, he submits that since the demand was held to be paid on technical ground, the Corporation was granted liberty to verify the same.

8. Be that as it may, it is not in dispute that recovery of Rs.33,76,698/- has been found to be illegal and void ab-initio. In the considered opinion of this Court, once ESI Court held so, there was no reason not to order refund thereof to the appellant. In case the ESI wishes to seriously re-verify the demand, it can well resort to the



mechanism as provided under the Act to recover the amount. On the pretext of re-verification, the amount ought not have been allowed to be retained by ESI.

9. Resultantly, the present appeal is allowed. ESI Corporation is directed to refund the amount of Rs.33,76,698/- alongwith interest as granted by the ESI Court to the appellant.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

07.01.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No