(2006) 12 KL CK 0045

In the High Court Of Kerala

Case No : M.F.A. No. 1024 of 2001

Cannanore Drug Lines APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 31, 31A
Employees State Insurance Act, 1948 — Section 39, 39(4), 39(5), 75, 77

Citation : (2007) 1 KLJ 212 : (2007) 2 LLJ 661

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : U.K. Ramakrishnan, E.K. Madhavan, P.V. Lohithakshan and Uma Gopinath, for the Appellant; P. Sankarankutty Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—This appeal is preferred by the applicant in E.I.C. No. 22/2000. Application was preferred u/s 75 read with Section 77 of the Employees'' State Insurance Act, 1948 seeking for a declaration that the assessment and demand of interest of Rs. 89,599/- for the delayed payment of E.S.I, contribution for the wage periods from March 1, 1992 to September 30, 1998 as per Exhibit P-3 notice and a sum of Rs. 863/- as interest for the delayed payment of contribution for the wage periods from October 1, 1998 to March 31, 1999 as per Exhibit P-5 notice and imposition of damages of Rs. 42,854/- by way of penalty for the delayed payment of contribution for the wage periods from March 1, 1992 to September 30, 1998 as per Exhibit P-11 are unsustainable.

2. E. S. I. Court disposed of the application holding that the assessment and levy of interest as per Exhibits P-3 and P-5 notices cannot be interfered with. With regard to the imposition of Rs. 42,854/- as damages by way of penalty as per Exhibit P-1 1 order, Insurance Court set aside the same. This appeal has been preferred mainly against the demand of interest as per Exhibits P-3 and P-5 notices.

3. Facts are undisputed. Contention was raised that the date fixed for payment of ESI contribution is not absolute going by Section 39(4) of the E.S.I. Act. Reference was made to the expression "ordinarily fall due". Further it was stated that Insurance Court held that though the two establishments of the applicant can be clubbed and treated as a single establishment for coverage under the E.S.I. Act, that decision was taken only on January 12, 1999 and even on that day no demand was made. Further, it is also stated that the finding of the Insurance Court that there is no statutory provision for relaxation of payment of interest on account of pendency of litigation is also incorrect. Liability to pay interest, it was contended, is not absolute and always flexible depending upon the facts and circumstances of each case. Department has taken a specific contention that the contribution has become payable as per the timeframe set out u/s 39 of the ESI Act and since there was no payment, interest will accrue, as per Section 39(5)(a) read with Regulations 31 and 31-A of the E.S.I. (General) Regulations, 1950.

4. We notice that the scope of the above mentioned provision has been elaborately considered by a Division Bench of this Court in W.A. 1277/2003 with which we fully concur. Section 39(4) of the E.S.I. Act states that the contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. Regulation 31 of the Employees'' State Insurance (General) Regulations, 1950 stipulates that an employer who is liable to pay contributions in respect of any employee shall pay these contributions within 21 days of the last day of the calendar month in which contributions fall due. Section 39(5)(a) of the E.S.I. Act states that if any contribution payable under the said Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the regulations till the date of its actual payment. Regulation 31-A states that an employer who fails to pay contribution within the period specified in Regulation 31 shall be liable to pay simple interest at the rate of 12% per annum in respect of each day of default or delay in payment of contribution. Above statutory provisions make it clear that the appellant was liable to pay the E.S.I, contributions which fell due on the last day of the wage period within 21 days of the last day of the calendar month in which the contributions fell due.

5. Merely because the appellant failed to pay contribution allegedly under a bona fide impression or belief that the establishment was not covered under the provisions of the ESI Act cannot absolve the appellant from the liability of paying interest on the delayed payment of E.S.I., contribution u/s 39(5) read with Regulation 31-A. Section 39(5)(a) uses the expression "if any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due". Regulation 31-A uses the expression "an employer who fails to pay contribution within the periods specified in Regulation 31". Neither the provisions in [the ESI Act nor the provisions in the ESI (General) Regulations give any discretion to the respondent to exempt the appellant from

the liability to pay interest on the delayed payment of E.S.I. contribution. The bona fide impression of the appellant that his establishment was not covered under the provisions of the E.S.I. Act or the pendency of a dispute before the E.S.I. Court regarding the appellant''s liability to pay E.S.I. contribution cannot be a valid ground for exempting the appellant from paying interest in terms of Section 39(5)(a) and Regulation 31-A. When the statute does not provide for any such exemption the respondent cannot exclude the amount of interest from the demand made against the appellant.

6. E.S.I. Court has also elaborately considered the scope of those provisions and took the view that once the establishment becomes liable to be covered under the ESI Act, the contribution also starts accruing in every wage period from the date of commencement of coverage and non payment of contribution within 21 days of the expiry of the relevant wage period attracts interest at the prescribed rates. We are of the view, so far as this case is concerned those provisions have been scrupulously followed by the department while issuing Exhibits P-3 and P-5 notices which in our view calls for no interference since they are in conformity with the judgment of this Court in W.A. No. 1277/2003. Under such circumstance appeal lacks merit and the same is dismissed.

