**(2010) 03 KAR CK 0008**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 7656 of 2008 (ESI)

Employees'' State Insurance Corporation and Another — APPELLANT

Vs

Swathi Packaging Private Limited — RESPONDENT

**Date of Decision :** 03-03-2010

**Acts Referred:**
Employees State Insurance Act, 1948 — Section 45 A, 75

**Citation :** (2010) 126 FLR 387 : (2010) 4 LLJ 381

**Hon'ble Judges :** V. Jagannathan, J

**Bench :** Single Bench

**Advocate :** V. Narasimha Holla, for the Appellant; J. Aravind Babu, for the Respondent

**Final Decision :** Dismissed

## Judgement

V. Jagannathan, J.—This appeal is by the Employees'' State Insurance Corporation challenging the order passed by the ESI Court allowing the application filed u/s 75 of the Employees'' State Insurance Act, 1948 (''the Act'' for short) by the Respondent-applicant and setting aside the order passed u/s 45A of the Act by the Corporation.

2. The learned Counsel for the ESI Corporation argued that though an order was passed u/s 45A of the Act on November 21, 2001 demanding contribution for the period from August 1, 2000 to March 31, 2001, the Respondent-applicant did not pay the contribution as demanded and, therefore, the ESI Court could not have set aside the Section 45A order passed. The correctness of the said order could not have been questioned and therefore, the ESI Court was in error in allowing the application filed by the Respondent-applicant. Moreover, the documents upon which the Respondent has relied were not the documents said to have been maintained in the normal course of business and it is the argument of the Appellant''s counsel that some of the documents were created as an afterthought subsequent to passing of Section 45A order. For these reasons, the impugned order be set aside. Referring to the documents produced by the applicant, the

 

submission made is that the salary slips and the attendance register and other challans produced before the ESI Court could not have been taken into consideration in view of the presumption in favour of the order u/s 45A of the Act.

3. On the other hand, the learned Counsel for the Respondent-applicant supported the order of the ESI Court by contending that the applicant produced the documents as per Exhibits A-1 to A-13 and all these documents were considered by the ESI Court and the amount of contribution paid by the applicant under various challans were also taken note of and, therefore, the ESI Court opined that the documents produced by the applicant having not been contested in the cross-examination, the order passed u/s 45A, therefore, cannot be sustained in law. As far as the limitation ground is concerned, the Court below found that there was no notice of the order passed u/s 45A to the applicant and, therefore, the ground of the application being barred by limitation was also rejected. As such, no interference is called for against the impugned order.

4. Having heard both sides and on going through the order of the ESI Court, I find that, the application filed by the Respondent-applicant was allowed on the footing that the documents produced by the applicant as per Exhibits A-1 to A-13 were not seriously questioned by the Corporation nor any evidence was placed by the Corporation to rebut the said documents and more particularly Exhibit A-10, which is the challan pertaining to the period from October 2000 to March 2001, wherein the details of the number of employees working in the applicant-establishment and the relevant month and total wages are all indicated and likewise. Exhibit A-12 is another challan and Exhibit A-13 is the report filed for the very same period and-taking all these documents into account, the ESI Court was of the view that the order passed u/s 45A, therefore, cannot be sustained apart from these, the Court also found that the evidence given by A. W. 1 on behalf of the applicant was in consonance with the documents produced and, therefore, the Court held that, as the applicant had paid the contribution on actuals, the question of demanding contribution on assumed wages does not arise.

5. In the light of the aforesaid reasoning given by the Court below, I am unable to accept the contentions put forward by the Appellant''s counsel that the documents-Exhibits A-1 to A-13 were all created subsequent to the passing of Section 45A order and if that were to be the contention, nothing prevented the Corporation from eliciting from the mouth of A.W.-1 that those documents were all an afterthought. In the absence of such evidence being brought on record, I see no case made out for this Court to interfere with the impugned order and no substantial question of law also arises for the very same reason.

6. The appeal is, therefore, dismissed.

 