
(2010) 09 DEL CK 0093
In the Delhi High Court
Case No : F.A.O. 529 of 1999

Employees State Insurance Corporation APPELLANT
Vs
Niranjan Industries RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 44, 45, 45(2), 45A, 45A(I)

Citation : (2011) 128 FLR 164 : (2011) 1 LLJ 797

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : K.P. Mavi, for the Appellant; None, for the Respondent

Judgement

Siddharth Mridul, J.—The question, which arises for consideration in this appeal is whether the period of limitation provided in proviso to explanation (b) of Section 77(1)(a) of the Employees State Insurance Act, 1948 (hereinafter referred to as "the Act") is applicable to Section 45A of the Act.

2. Before alluding to the relevant facts, it is proper to reproduce Section 77 of the Act. The relevant provision provides as follows:

77. Commencement of Proceedings. - (1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation. - For the purpose of this sub-section, -

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependents' benefit, the dependents of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest, and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

3. The relevant facts as are necessary for the adjudication of the present appeal is that the Employees State Insurance Corporation (hereinafter referred to as "the Corporation") has vide communication dated 25th March, 1993 informed the respondent that it determined to recover a sum of Rs. 3,617.25 paise, as contribution payable in respect of the employees of its factory/establishment u/s 45A of the Act w.e.f. 5th May, 1981 to 5th May, 1982.

4. Feeling aggrieved by the order dated 25th March, 1993, the respondent moved an application before the ESIC Court u/s 75 of the Act. The application was heard by the ESIC Court, who relying upon the proviso to Explanation (b) of Section 77(1A) held that the claim of the corporation was barred by time.

5. It may be noticed that the limitation period of five years, as laid down in the proviso to Explanation (b) of Section 77(1A) was three years from the date of the cause of action and the Corporation could raise the dispute within five years thereafter.

6. It is submitted by learned Counsel for the appellant that the point in issue, as noticed at the outset, is no longer resintegra and it is squarely covered by a judgment of the Supreme Court in the case of E.S.I.C. Vs. C.C. Santhakumar, .

7. Before referring to the decision of the Supreme Court, it will also be appropriate to reproduce Sections 45A and 45B of the Act. The same run as under:

45A. Determination of contributions in certain cases. - (1) Where in respect of a factory of establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45, the Corporation may, on the basis of information available to it, by

order, determine the amount of contributions payable in respect of the employees of that factory or establishment:

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B or the recovery under Sections 45C - 45I.

45B. Recovery of contributions. - Any contribution payable under this Act may be recovered as an arrear of land revenue.

8. Now referring to, what the Supreme Court said on Sections 45A and 45B and the proviso to Section 77(1A)(b) of the Act in the case of ESI Corporation v. C.C. Santhakumar (*supra*) as under:

25. Section 45-A of the Act contemplates a summary method to determine contribution in case of deliberate default on the part of the employer. By Amendment Act 29 of 1989, Sections 45-C - 45-I were inserted in the Principal Act, for the purpose of effecting recovery of arrears by attachment and sale of movable and immovable properties or establishment of the principal or immediate employer, without having recourse to law or the ESI Court. Therefore, it cannot be said that a proceeding for recovery as arrears of land revenue by issuing a certificate could be equated to either a suit, appeal or application in the court. u/s 68(2) and Sections 45-C - 45-I, after determination of contribution, recovery can be made straightaway. If the employer disputes the correctness of the order u/s 45-A, he could challenge the same u/s 75 of the Act before the ESI Court.

26. On a plain reading of Sections 45-A and 45-B in Chapter IV and Sections 75 and 77 in Chapter VI of the Act, as indicated above, there cannot be any doubt that the area and the scope and ambit of Sections 45-A and 75 are quite different.

27. If the period of limitation, prescribed under proviso (b) of Section 77(1-A) is read into the provisions of Section 45-A, it would defeat the very purpose of enacting Sections 45-A and 45-B. The prescription of limitation u/s 77(1-A)(b) of the Act has not been made applicable to the adjudication proceedings u/s 45-A by the legislature, since such a restriction would restrict the right of the Corporation to determine the claims u/s 45-A and the right of recovery u/s 45-B and, further, it would give benefit to an unscrupulous employer. The period of five years, fixed under Regulation 32(2) of the Regulations, is with regard to maintenance of registers of workmen and the same cannot take away the right of the Corporation to adjudicate, determine and fix the liability of the employer u/s 45-A of the Act, in respect of the claim other than those found in the register of

workmen, maintained and filed in terms of the Regulations.

28. What Section 75(2) empowers is not only the recovery of the amounts due to the Corporation from the employer by recourse to the ESI Court, but also the settlement of the dispute of a claim by the Corporation against the employer. While this is so, there is no impediment for the Corporation also to apply to the ESI Court to determine a dispute against an employer where it is satisfied that such a dispute exists. If there is no dispute in the determination either u/s 45-A(1) or u/s 68, the Corporation can straightaway go for recovery of the arrears.

29. Section 77 of the Act relates to commencement of proceedings before the ESI Court. The proviso to Sub-section (1-A)(b) of Section 77 of the Act cannot independently give any meaning without reference to the main provision, namely, Section 77 of the Act. Therefore, the proviso to Clause (b) of Section 77(1-A) of the Act, fixing the period of five years for the claim made by the Corporation, will apply only in respect of claim made by the Corporation before the ESI Court and to no other proceedings.

9. In the light of the above quoted paragraphs, it is clear that no period of limitation can be read into an order passed u/s 45A of the Act and, that any determination made under the said Section by the Corporation shall not attract the limitation prescribed under proviso to Section 77(1A) of the Act. After having held so, the Supreme court also dealt with the question, whether a concept of reasonable time can be read into the provision even though not specifically provided for? On this aspect, it has been said in the judgment that a "reasonable period" would depend upon the factual circumstances of the case concerned and that there cannot be any empirical formula to determine that question. It has been further held that the Court/authority considering the question, whether the period is reasonable or not, has to take into account the surrounding circumstances and relevant factors to decide that question.

10. It may be noticed that none appears for the respondent to contest the appeal despite notice and, therefore, the question whether the period for which assessment u/s 45A of the Act was made, could be termed reasonable period, did not arise.

11. For what has been noticed above, the impugned order insofar as it holds that the demand made by the appellant for the period from 5th May, 1981 to 5th May, 1982 was barred by time, is set aside.

12. The appeal is disposed of accordingly.