
(2007) 10 KL CK 0015
In the High Court Of Kerala
Case No : M.F.A. No. 1179 of 2001

E.S.I. Corporation

APPELLANT

Vs

Appollo Tyres Ltd.

RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Citation : (2008) 1 LLJ 1033

Hon'ble Judges : K. Hema, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P. Sankaran Kutty Nair, for the Appellant; S.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—This case is referred to the Division Bench noticing conflict of views in the decisions in Regional Director, E.S.I. Corporation Vs. Cannanore Spinning and Weaving Mills, and Cannanore Drug Lines Vs. Employees State Insurance Corporation, regarding liability to pay interest on delayed contribution due to the stay order issued by the court.

2. Respondent is a factory covered under the ESI Act. The wage ceiling for coverage under the Employees' State Insurance Act was extended from Rs. 3,000/- to Rs. 6,500/- with effect from January 1, 1997. Unions challenged the above notification before this Court and this Court granted a stay. In view of the above stay order, respondent was not able to collect the contribution from the employees who were drawing salary between Rs. 3,000/- and Rs. 6,500/-, but, later, stay was vacated and coverage was accepted by the court. When the stay was vacated, the entire employees' contribution and employers' contribution were paid by the respondent. Then, appellant ESI Corporation demanded interest for the delayed payment. Contention of the respondent was that they were willing to pay the amount even at the first instance, but, they were unable to pay the amount because of the stay and, therefore, they are unable to pay the interest. It is not the respondent employer who obtained the stay, but,

employees got the stay. Therefore, employer was unable to pay the contribution amount during the period. Since the employees who were drawing salary between Rs. 3,000/- and Rs. 6,500/- were not covered, employer had to pay the entire medical and other benefits due to them. After vacation of the stay, Corporation got the entire contribution without paying any; benefits, that is, employers' and employees' contribution. Therefore, actually, it is the Corporation who gained because of the stay. In any event, after paying all the benefits and paying retrospective contribution, whether they are liable to pay interest also for no fault on their part is the question.

3. On an identical facts, this Court in *Regional Director, ESI Corporation v. Cannanore Spinning and Weaving Mills* (supra) held that interest is not liable. We are of the view that interest cannot be levied on the facts of the case. It is true that in *Cannanore Drug Lines v. ESI Corporation* (supra), a Division Bench of this Court held that Corporation has no discretion to exempt employers from liability to pay interest for delayed payment of ESI contribution. If a party is not paying the contribution correctly in time on a wrong impression, Corporation is bound to pay interest. Even if a party obtains stay from the Court and later it is vacated, the employer who got the stay cannot say that they will not pay the interest. If the establishment is not paying the contribution due, even if on a bona fide impression that the establishment is not covered, they are liable to pay statutory interest on the delayed payment of contribution if finally it is held that the establishment is covered under the ESI Act. Here, employer was prevented by the stay order issued by the Court, an act of the court, at the instance of the employees. On the facts of this case, E.I. Court, following the decision of this Court in *Cannanore Spinning and Weaving Mills* case held that interest need not be paid. It is not a question of ESI Corporation granting exemption from payment of interest as interest cannot be waived by the ESI Corporation as held by the Division Bench in *Cannanore Drug Lines v. ESI Corporation* (supra) if employer fails to pay contribution on a bona fide belief. Therefore, on the facts, the decision in *Cannanore Drug Lines v. ESI Corporation* (supra) is not in conflict with the decision in *Regional Director, ESI Corporation v. Cannanore Spinning and Weaving Mills* (supra). The reference is answered accordingly and on the facts of this case, we see no ground to interfere in the order of the E.I. Court. Appeal dismissed.