
(2011) 04 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 5196 of 2010

Essma Woollen Mills Pvt. Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation and Another

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 31A
Employees State Insurance Act, 1948 — Section 77, 77(1A)

Citation : (2011) 129 FLR 1063 : (2011) 3 LLJ 841 : (2011) LLR 650

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—Challenge in the present appeal is to the judgment of the learned Employees State Insurance Court, Amritsar dated

15.5.2010 whereby the petition filed by the Appellant challenging the payment of interest on account of delayed payment of ESI contribution has

been dismissed.

The interest was demanded from the Appellant on account of delayed contribution deposited by the Appellant on 23.7.2004 pertaining to the

period from April 1983 to March 1987, April 1980 to March 1990, April 1987 to April 1990 and 1990 to 1995. The order vide which the

interest was demanded was passed by the Regional Director on 10.11.2004.

2. Learned Counsel for the Appellant submitted that the demand of interest from the Appellant for the periods ranging from 1983 to 1995, is highly

belated as in terms of Section 77 (1-A) Explanation (b) of the Employees State Insurance Act, 1948 (for short, "the Act"), No. demand could be

raised by the Employees State Insurance Corporation (for short, "the

Corporation") for any period prior to five years for which the claim relates.

In the present case, the demand of interest was raised for the period ranging from 1983 to 1995, the order having been passed on 10.11.2004, it

was beyond the period of five years. The demand was required to be set aside, however, the learned Court below did not appreciate the legal

contention and rejected the claim.

3. On the other hand, learned Counsel for the Respondents submitted that Section 77 of the Act provides for limitation for initiation of proceedings

in the ESI Court. Explanation (b) thereof provides the period of limitation for the Corporation for initiating action for recovering contributions

(including the interest and damages) from the principal employer. This section does not talk of limitation for raising demand from an

employer/establishment. The contribution for the period mentioned above having been deposited on 23.7.2004, immediately thereafter demand for

interest was raised, as the interest could possibly be calculated only after the payment of the amount of contribution as provided for in Regulation

31A of the Employee's State Insurance (General) Regulations, 1950 (for short, the Regulations).

4. Heard learned Counsel for the parties and perused the paperbook. The case set up by the Appellant is that in terms of Section 77 of the Act

No. demand could be raised by the Corporation for any period prior to five years for which the claim relates. Section 77 of the Act is reproduced

as under:

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

(1-A) 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 dependants' benefit,

the dependants of the insured person claims or claim that benefit in accordance with the Regulations made in that behalf within a period of 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.

5. The aforesaid provision provides the period within which an application can be filed in the ESI Court, Explanation (b) of which reliance is sought

to be placed by learned Counsel for the Appellant only provides that cause of action in respect of a claim made by the Corporation for recovering

contribution (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. Proviso thereto provides that No. claim shall be made by the Corporation after five years of the period to

which the claim relates.

6. The aforesaid provisions provides for limitation with respect to claim raised by the Corporation before the ESI Court. It does not prescribe any

period for passing any order by the authorised officer of the Corporation against any employer-establishment. Hence, the contention raised by

learned Counsel for the Appellant referring to the aforesaid provisions challenging the order of payment of interest to be beyond limitation is

misconceived.

7. Regulation 31-A of the Regulations clearly provides for payment of interest for delayed deposit of ESI Contribution @ 12% per annum. The

fact that contributions for the period from April 1983 to March 1987, April 1980 to March 1990, April 1987 to April 1990 and 1990 to 1995

were deposited by the Appellant on 23.7.2004 is not in dispute. The amount of interest is merely compensatory in nature which has been

demanding from the Appellant by the Corporation for the period of delay in deposit of contribution. Therefore, the order passed on 10.11.2004

demanding interest after the deposit of contribution by the Appellant and after issuing show cause notice dated 23.7.2004, and affording

opportunity of hearing, cannot be said to be illegal.

For the reasons mentioned above, I do not find any merit in the appeal, the same is dismissed.