(2013) 03 MAD CK 0173

In the Madras High Court

Case No : C.M.A. No. 3608 of 2012

Hotel Guru Pvt. Ltd. APPELLANT

Vs

The Deputy Director and Another RESPONDENT

Date of Decision : 25-03-2013

Acts Referred:

Citation : (2013) 4 LLN 297 : (2013) LLR 1188

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : Y.N. Venkatraj, for the Appellant; C.V. Ramachandramurthy, for the Respondent

Final Decision : Allowed

Judgement

C.T. Selvam, J.—This Civil Miscellaneous Appeal arises against the Award of the Employees'' Insurance Court (Principal Labour Court), Chennai, passed in E.I.O.P. No. 449 of 2001 on 07.09.2012. The Petitioner is a Hotel by name ''Hotel Guru Private Limited'', which also runs a restaurant Sri Devi Restaurant by name. The Hotel run by the Petitioner was inspected by the Second Respondent on 24.09.1990 and during the course of such inspection, the Wage Register and other records maintained by the Petitioner was scrutinized. It was found that there were 12 to 15 Employees were working in the Hotel from January to August 1990. According to the E.S.I. Corporation, the Petitioner''s Hotel fell under the purview of the Employees'' State Insurance Act (hereinafter referred to as ESI Act). Even though the Petitioner furnished Form I indicating the nature of business carried on, name of the ''authorised person'' and the address of the place of business, he had failed to furnish records to show the payment of subscription amount, etc. The Corporation has, therefore, sent a communication dated 30.11.1990 on the basis of available records and called upon the Petitioner to remit contributions as required under the ESI Act. Even though the same was received by the Petitioner, there was no reply nor remittance by the Petitioner. Therefore, a Show Cause Notice dated 05.11.1993 was issued calling upon the

Petitioner for to Appeal on 05.01.1994 to show cause as to why contribution for the period from 1/1990 to 3/1993 be not recovered from it. Even though the Show Cause Notice dated 05.11.1993 was received, the Petitioner neither appeared in person nor questioned the correctness of the details furnished in the Show Cause Notice. Therefore, invoking Section 45A of the ESI Act, the First Respondent passed an order 07.08.2001 determining the quantum of contribution payable by the Petitioner at Rs. 42,714/- for the period from 1/1990 to 6/1993 with interest at the rate of 15%. Challenging such Order, the Petitioner has filed E.I.O.P. No. 449 of 2001 before the Tribunal.

2. Before the Court, on behalf of the Petitioner, one Ms. P.M. Rathi kumari was examined as PW1 and Exs. P1 to P10 were marked. On the side of the Respondents/Corporation, RWs. 1 & 2 have been examined and Exs. R1 to R7 have been marked. The Court, after analysing the oral and documentary evidence and under Orders dated directed the Petitioner to pay a sum of Rs. 27,455/-, taking into account the payment of Rs. 15,259.11 made during the pendency of the case. Challenging such Order the Petitioner has preferred the present Civil Miscellaneous Appeal.

3. Learned Counsel for Petitioner would contend that the E.S.I. Court failed to appreciate Ex. P3 series, Payment Receipts issued by the Corporation, which would indicate that the Petitioner remitted contribution towards its Employees. Learned Counsel for Petitioner also would contend that the Show Cause Notice was issued on 05.11.1993 and after lapse of 8 years, the Order u/s 45A of the ESI Act was issued by the First Respondent on 07.08.2001. Therefore, before passing the final Order on 07.08.2001, the Corporation ought to have afforded an opportunity of hearing to the Petitioner in compliance with the Principles of Natural Justice and in the absence of the same, the final Order passed on 07.08.2001 is not sustainable.

4. Per contra, learned Counsel appearing for Respondent-Corporation would contend that as per Ex. R6, the Show Cause Notice dated 30.11.1993 was duly served on the Petitioner. Having received the same, the Petitioner ought to have appeared before the Respondent-Corporation and furnished documentary evidence to prove that remittances have been made as required under the ESI Act. Therefore, before passing the final Order u/s 45A of the Act, sufficient opportunity was afforded to the Petitioner and therefore, the Order dated 07.08.2001 does not suffer from any legal infirmity. Learned Counsel for Respondent-Corporation relied on the decision of the Division Bench of this Court in New Karpagam Hotel Vs. The Regional Director, ESI Corporation, , wherein it was held that the object of the ESI Act is to provide Medical coverage to Employees employed in small establishments, including Hotel and therefore, statutory spirit of the ESI Act cannot be defeated by adopting a narrow approach.

5. This Court has considered the rival submissions and perused the records. Admittedly, the Petitioner is running a Hotel and is engaged in the process of food manufacture. The nature of business falling within the scope of the ESI Act,

the Respondent-Corporation, after an inspection, found that the Petitioner did not remit contributions. It issued a Show Cause Notice dated 30.11.1993, which was duly served on the Petitioner as per Ex. P6. Even though the Notice was received, the Petitioner has not chosen to take any action. However, it is to be seen that after about 8 years from the date of Show Cause Notice, the First Respondent passed the final Order on 07.08.2001 invoking Section 45A of the ESI Act determining the contribution payable by the Petitioner at Rs. 42,714/-. There is no explanation forthcoming from the Respondent ought to have passed the final Order within a reasonable time and the delay of 8 years in passing the same vitiates the entire proceedings initiated by the Respondents. Therefore, the Order dated 07.08.2001 passed by the First Respondent suffers from laches and is liable to be set aside. The Appeal is allowed by setting aside the Order passed by the Tribunal. No costs. The Petitioner is permitted to withdraw the sum of Rs. 10,679/- deposited by them to the credit of C.M.P. No. 245 of 2011 in E.I.O.P. No. 449 of 2001 on 26.09.2001.

