(2010) 07 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 2766 of 2009 (O and M)

JCT Electronics Ltd. APPELLANT

Vs

Employee's State Insurance Corporation and Others RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 75(2B), 82
Limitation Act, 1963 — Section 12, 5

Citation : (2011) 2 LLJ 380

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order of Employee''s State Insurance Court, Chandigarh by which an application filed u/s 75(2-B) of the Employee''s State Insurance Act, 1948 (for short ''the Act'') seeking exemption from depositing the amount stipulated therein before raising the dispute in respect of the contribution between the employer and the Corporation.

2. In this appeal notice of motion was issued on July 2, 2009 and in the meanwhile, directions with regard to deposit of 50% of the amount with the Respondent issued vide the impugned order dated May 22, 2009, passed by the Employee'' State Insurance Court, Chandigarh was stayed.

3. At the outset, Mr. B.S. Bhatia, learned Counsel for the Respondents has challenged the maintainability of the appeal against the impugned order on the ground that as per Section 82 of the Act, appeal is maintainable only against substantial question of law whereas impugned order has been passed with regard to non-compliance of procedure in filing the appeal.

4. Faced with this situation, learned Counsel for the Appellant has relied upon a decision of the Allahabad High Court in the case of Modi Steels Unit v. Employee''s State Insurance Court (SDM) Ghaziabad and Ors. (1985) LabIC 28 to contend that Section 82 does not limit the right of appeal only to an order finally disposing of the matter u/s 75 but it also applies to order refusing ad

interim injunction.

5. On the other hand, learned Counsel for the Respondents relied upon a decision of the Supreme Court in the cases of Central Bank of India Vs. Shri Gokal Chand, decision of Bombay High Court in the case of Employees State Insurance Corporation, Pune v. Force Motors Limited (Formerly known as Bajaj Tempo Ltd., Pune) 2008 III LLJ 81 (Bom) and a decision of Division Bench of the Allahabad High Court in the case of Satyam Glass Works Industries Vs. The Employees State Insurance Corporation, .

6. Before appreciating the arguments raised by both the learned Counsel for the parties, it will be necessary to refer to the relevant provisions of law i.e. Section 75(2-B) and Section 82 of the Act, which are reproduced as under:

Section 75(2-B): No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the employee''s; Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Sub-section.

82 Appeal: (1) Save as expressly provided in this Section, no appeal shall he from an order of an employee''s Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees'' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this Section shall be sixty days.

(4) The provisions of Sections 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this Section.

7. Section 75(2-B) of the Act provides that in order to raise a dispute by the principal employer against the Corporation in respect of the contribution or any other dues, 50% of amount of the contribution has to be deposited by the principal employer in the Court as a condition precedent which is claimed by the Corporation. However, discretion is granted to the Court, for reasons to be recorded in writing, to waive or reduce the amount to be so deposited.

8. Insofar as Section 82 of the Act is concerned, it provides that simply no statutory appeal would lie from an order of Employees'' Insurance Court except against an order which involves a substantial question of law and the period of limitation to file such an appeal would be 60 days.

9. The question involved in this case is as to whether the impugned order dated May 22, 2009 whereby, application filed by the Appellant u/s 75(2-B) for seeking exemption from depositing 50% of the amount claimed by the Corporation, which has been dismissed raises a substantial question of law or not.

10. The matter is no more res integra in view of Division Bench judgment of the Allahabad High Court in the case of Satyam Glass Works Industries and Anr. v. Employee''s State Insurance, Kanpur (supra) wherein it has been held that in case to waive or reduce mandatory deposit of 50% of amount due, the order of rejection does not raise any substantial question of law and on that account the appeal is not maintainable.

11. Similarly in the case of Employees State Insurance Corporation, Pune v. Force Motors Limited (Formerly known as Bajaj Tempo Ltd., Pune) (supra) it has been held that unless an order determines the right and obligation, the order is not appealable order u/s 82 of the Act, therefore, the impugned order which is an interlocutory on procedural defect, which does not finally decide the rights or liabilities of the parties, cannot be appealed u/s 82 of the Act.

12. Besides the aforesaid judgment, this Court is also of the view that the application for seeking waiver/exemption of mandatory deposit of 50% of the amount claimed by the Corporation is an interlocutory order in the sense that as it does not raises a substantial question of law and is thus, not appealable.

13. However, the Appellant is not remedy-less. In case the appeal is not maintainable, he is free to choose his remedy in accordance with law.