

(2007) 12 KAR CK 0017
In the Karnataka High Court
Case No : Misc. First Appeal No. 8590 of 2004

Mosaic Industires Pvt. Ltd.

APPELLANT

Vs

ESI Corporation

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 39 (4), 39 (5), 40, 93 (A)

Citation : (2008) 118 FLR 182 : (2008) ILR (Kar) 988 : (2008) 3 KarLJ 462 : (2008) 3 LLJ 436

Hon'ble Judges : Manjula Chellur, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : K. Rama Bhat and Associates, for the Appellant; M.P. Associates, for the Respondent

Final Decision : Dismissed

Judgement

1. Though the matter appears for admission, by consent of both parties, heard on merits and disposed of.

2. It is not in dispute that the appellant establishment is covered under the Employees State Insurance Act, 1948, (for short, "the ESI Act".) The dispute pertains to claim of interest on the omitted wages for the period between 1979 to 1983. According to the Corporation the omitted wages were Rs. 1,63,600/- for the above said period and in the year 1988 when the officers of the Corporation inspected and verified the accounts determined that Rs. 1,63,600/- were omitted wages which were not taken into account as contributions to be made by the appellant establishment. When orders came to be passed u/s 45-A of the ESI Act, Application No. 13/88 came to be filed by the appellant before the ESI Court which stayed the orders u/s 45-A. Subsequently, upon constitution of the ESI Court at Mangalore, the matter was transferred to ESI Court at Mangalore and re-numbered as Application No. 37/94 which came to be disposed of on 30.11.2002.

According to the appellant if at all he is required to pay interest it has to be only

from 30.11.2002 and not from the due date as contemplated under the ESI Act, for the following two reasons, viz., they were under the impression that this Rs. 1,63,600/- paid towards cash of labour and other allowances need not be taken into consideration for assessing the contribution to the Corporation and the second reason why they seek leniency is that the appellant establishment is a defunct unit for the last 15 years. He relies upon the decision in The Joint Director, ESI Corporation and Another Vs. Riddhi Siddhi and Chemicals Ltd., wherein it is held as under:

Employees State Insurance Act, 1948-Sections 39(4) (5), 40, 93(A)-Employees General Regulations, 1950-Regulation 31-A & B-Non-payment of contribution in time due to the voluntary act on the part of respondent company-Respondent Company taking shelter due to the judgment of the Division Bench of this Court holding the field until overruled by the Apex Court-Whether liable to pay interest. Held-The Division Bench judgment of this Court came to be overruled by the Apex Court on 6.11.1996. The respondent company at the same time cannot contend that no interest is payable at all but is certainly liable to pay interest from 6.11.1996 on the date on which the Apex Court overruled the judgment of the Division Bench of this Court. Therefore, non-payment of contribution on the due date, in the peculiar circumstances of this case, does not warrant levying of interest within the meaning of Clause (a) of Sub-section (5) of Section 39 of the ESI Act for the relevant period up to 6.11.1996 and that the respondent is however liable to pay interest from 6.11,1996 up to 14.12.2000.

In the above decision, the question involved was whether the establishment could have been asked to pay the interest on the over time wages which was settled by a Division Bench judgment of this court in Hind Art Press, Mangalore Vs. E.S.I. Corporation and Another, The benefit was claimed based on this Judgment and the principle laid down in the said judgment ultimately came to be over ruled by the Apex Court in the case of Drug Pharmaceuticals Ltd., v. E.S.I., Corporation 1997 (2) LLJ 700. Therefore, the learned Single Judge in The Joint Director, ESI Corporation and Another Vs. Riddhi Siddhi and Chemicals Ltd., held that the unit could take benefit because of the Division Bench judgment in Hind Art Press, Mangalore Vs. E.S.I. Corporation and Another, impliedly over ruled by the later judgment of the Supreme Court.

In the present case the facts are entirely different. When the claim was made by the Corporation in 1988, the judgment in M/s. Hind Art. Press was not even pronounced. On the other hand, the wages claimed are for the period 1979 to 1983. As on that date, there was no such law declared by this Court or the Apex Court that the establishment need not pay any ESI contribution on over time or cash labour or other allowances. Sub-section (5) of Section 39 is very clear on this aspect which reads as under:

If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as

may be specified in the regulations till the date of its actual payment.

4. The interest payable by the employer would become due at the end of every 21 days after the completion of the previous month. That being the situation, between 1979-1983 the amount calculated is Rs. 1,63,600/- which is not at all an amount which could go unnoticed by anyone. That apart, if the unit has become defunct since the last 15 years, nothing prevented them from paying such contribution as and when they become due in accordance with law or at least in 1988. Even otherwise, if at all a unit is declared as sick unit, only damages could be waived under the regulation and not the interest. Having regard to the facts and the discussion made above, we do not find that the two grounds on which the appellant is seeking concession come to his assistance.

5. Accordingly, the appeal is dismissed.