(2014) 01 MAD CK 0064

In the Madras High Court

Case No : C.M.A. No. 3750 of 2010

M/s. Muthurama Textiles	APPELLANT
Vs	
The Regional Director, E.S.I. Corporation and Another	RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 38, 38, 39, 40, 40

Citation : (2014) LabIC 1307

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Judgement

P.R. Shivakumar, J.—This Civil Miscellaneous Appeal has been filed u/s 82 of the Employees State Insurance Act, 1948, challenging the order of the Employees Insurance Court (Labour Court), Salem dated 11.02.1998 made in E.S.I.O.P. No. 39 of 2000 on the file of the said Court. The Deputy Regional Director of the Employees State Insurance Corporation, Chennai-34 passed an order u/s 45A of the Employees State Insurance Act, 1948 levying a sum of Rs. 79,879.80 towards contribution for the period from 21.04.1985 to 30.06.1993 and a further sum of Rs. 33,629.39 towards interest for the delay in payment of the contribution. Thus, a total sum of Rs. 1,13,509.19 was levied as contribution and interest with a further direction that the appellant should pay interest of Rs. 33.28 per day from 01.02.1998. Based on the report of the Insurance Inspector show-cause notices were issued under Form C-18 to the appellant on 10.09.1986 and 28.07.1994 calling upon the appellant to show-cause as to why contribution should not be levied as per the details of calculation furnished in the said notice. The appellant failed to respond and hence the Deputy Regional Director of the Employees State Insurance Corporation passed the above said order dated 11.12.1998 u/s 45A of the Employees State Insurance Act, 1948 holding the appellant to be the employer in relation to the factory/establishment situated at No. 170, Tiruchengode Road, Pallipalayam. Stating that the appellant, as employer, did not submit any statement or return furnishing the amount due towards contribution, the Deputy Regional Director of E.S.I. Corporation determined the Contribution on ad hoc basis as per the provisions found in Section 45A of the Employees State Insurance Act, 1948. Besides passing such an order determining the contribution, a certificate was also issued u/s 45C of the Employees State Insurance Act to the Recovery Officer for recovery of the amount determined as contribution as per the provisions found in Sections 45B to 45I of the Employees State Insurance Act.

2. Only pursuant to the issuance of the certificate for recovery of the contribution with interest, M/s. Muthurama Textiles, the appellant herein has chosen to file E.S.I.O.P. No. 39 of 2000 u/s 75 of the Employees State Insurance Act, 1948 against the order of the Deputy Regional Director of Employees State Insurance Corporation dated 11.12.1998. The said E.S.I.O.P. came to be preferred on the file of the Employees Insurance Court (Labour Court), Salem praying for an order setting aside the notice dated 11.12.1998 issued u/s 45A of the Employees State Insurance Act holding the same to be null and void and for restraining the respondents from recovering the amount mentioned in the said notice. The appellant in the said E.S.I.O.P contended that though the appellant owned the premises at No. 171, Tiruchengode Road, Pallipalayam, a portion of the said premises separately identified as No. 171-A, Tiruchengode Road, Pallipalayam along with six power looms had been leased out to one Nagaraj, Son of Subramaniam; that the said lessee, besides undertaking job work from the appellant for conversion of yarns into fabric, was free to accept any job work from third parties; that the portion leased out to the said lessee and the portion retained by the appellant were well demarcated and that the Deputy Regional Director of Employees State Insurance Corporation, without application of mind and with the mistaken identity, construed the appellant as an establishment coming under the purview of the Employees State insurance Act and demanded contribution since 1986 till 1993. It was also contended therein that the respondents could not have levied contribution for a period beyond three years prior to the date of such determination of contribution and that on the ground of limitation also, the order of the Deputy Regional Director of Employees State Insurance Corporation was liable to be set aside declaring the same to be null and void.

3. The respondents herein, who figured as the respondents in the E.S.I.O.P before the Court below, resisted the said prayer made in the petition denying the contentions of the appellant that the premises have been demarcated into two portions, namely 171 and 171-A stating that the said portion had a common door and a common electricity connection and that at the time of inspection by the Insurance Inspector, 12 employees were working in the establishment.

4. In the enquiry that was conducted before the Court below (Employees State Insurance Court), one witness was examined as P.Ws. 1 and 11 documents were marked as Exs.P1 to P11 on the side of the appellant herein (petitioner). One witness was examined as R.W.1 and 6 documents were marked as Exs.R1 to R6 on the side of the respondents herein/respondents in the E.S.I.O.P.

5. At the end of the enquiry, the learned Judge of the Employees Insurance Court heard the arguments advanced on both sides, considered the evidence in the light of the points canvassed in the arguments and upon such consideration dismissed the said E.S.I.O.P disbelieving and rejecting the case or the appellant herein by an order dated 18.04.2005. The said order of the Court below (Employees Insurance Court) dated 18.04.2005 made in E.S.I.O.P. No. 39 of 2000 is challenged in this Civil Miscellaneous Appeal on various grounds set out in the memorandum of Civil Miscellaneous Appeal.

6. This Civil Miscellaneous Appeal came to be admitted by this Court by an order dated 19.01.2011. Section 82(2) of the Employees State Insurance Act provides that an appeal shall lie to the High Court from an order of an Employees Insurance Court if it involves substantial question/s of law. The right of appeal is conditioned by the rider that the appeal shall involve a substantial question of law. Hence, at the time of admission of the appeal, this Court itself should have ascertained whether the appeal involved a substantial question of law. In case the Court is not satisfied that the appeal involves a substantial question of law, it ought not to have admitted the appeal. In case the Court would come to the conclusion that it involved a substantial question of law at the time of admission, it should have identified and noted the substantial question of law involved in the appeal. Of course, this Court chose to pass an order simply admitting the Civil Miscellaneous Appeal without formulating the substantial question of law involved in the appeal. The same is nothing but an irregularity which can be cured by identifying the substantial questions of law, if any, involved in the appeal.

7. The appellant in the grounds of appeal has formulated the following questions as substantial questions of law involved in the appeal:

(1) Whether the appellant firm is covered under the Act when one of its partners in his individual capacity had leased out his premises along with machineries installed to a third party and who could be brought under the Act?

(2) Whether an establishment could be brought under the coverage for the period preceding three years from its date of inspection?

(3) Whether an establishment could be brought under the purview of the Act on the presumption that one of its partners and a third party had a secret pact to avoid contributions and in the absence of cogent evidence against the appellant?

8. Though the above said questions projected by the appellant as substantial questions of law involved in the Civil Miscellaneous Appeal are not happily worded, they bring to light the controversy and this Court is of the view that the same can be corrected and modified and thus the substantial questions of law involved in the appeal can be identified. Accordingly, the following question of law are identified as substantial questions of law to be involved in the appeal:

(1) Whether contributions can be levied on an establishment covering a period exceeding three years from the date of inspection of the establishment? Whether

the question of limitation will come in the way of the Employees State Insurance Corporation from effecting recovery of contribution and the interest under Chapter 4 of the Employees State Insurance Act?

(2) Whether the lower Court committed an error in holding the appellant firm to be the employer in respect of the establishment concerned in this appeal when the premises along with machineries installed therein had been leased out to a third party by one of the partners of the appellant firm in his individual capacity?

(3) Whether the appellant could be held to be the employer in respect of the subject establishment to be brought under the purview of the Act on the presumption that one of the partners of the appellant firm and a third party had a secret pact to avoid contributions, in the absence of cogent evidence against the appellant?

9. The arguments advanced by Mr. R. Subramanian, learned counsel for the appellant and by Mr. M. Venkatachalapathy, learned counsel for the respondents (officials of the E.S.I. Corporation) were heard. The materials available on record submitted by the Court below for reference in this appeal were also perused.

10. It is an admitted fact that the appellant firm is engaged in textile business and it carries on the said business in the name and style of "M/s. Muthurama Textiles" at No. 171, Tiruchengode Road, Pallipalayam. It is also not in dispute that six power looms are there in the premises and all the six power looms are owned by the appellant firm. On an inspection made by the Insurance Inspector, it was found that 12 workmen were employed in the power loom establishment at the time of his inspection. It is also an admitted fact that electrical power is used for the manufacturing activity, namely conversion of yarns into textiles by operating the power looms. The same was the reason why the Deputy Regional Director of Employees State Insurance Corporation held the same to be a factory/ establishment in relation to which the appellant was liable to pay contribution under the Employees State Insurance Act as employer. However, the appellant has chosen to contend that the premises bearing Door No. 171, Tiruchengode Road, Pallipalayam was bifurcated with two portions with Door Nos. 171 & 171-A; that only in the portion designated with Door No. 171-A, Tiruchengode Road, Pallipalayam, manufacturing activities, namely conversion of yarns into textiles, is carried on; that the said portion with six power looms therein had been leased out to one Nagaraj, son of Subramaniam for a monthly rent of Rs. 600/-; that the said lessee Nagaraj was free to undertake job works from third parties besides doing the job work of conversion of yarns into textiles assigned by the appellant; that the appellant firm without doing any manufacturing business was simply engaged as a textile merchant and that hence holding the appellant firm to be the employer running the above said factory/establishment for levy of contribution under the E.S.I. Act was against law and improper.

11. Per contra, it is the contention of the learned counsel for the respondents that the alleged lease arrangement was nothing but a device made by the

appellant firm in order to evade payment of contribution; that in any event, since the manufacturing work is done by the alleged lessee in the premises of the appellant firm, the appellant shall be liable to pay contribution; that the appellant, as Principal employer is duty bound to furnish the particulars of the immediate employer; that the obligation of the principal employer to pay contribution to the Employees State Insurance Corporation shall be absolute subject to a right of reimbursement from the immediate employer and that since the appellant firm failed to furnish the particulars of the alleged lessee (immediate employer), the appellant firm cannot challenge the levy of contribution made u/s 45A of the Employees State Insurance Act, 1948. It is the further contention of the learned counsel for the respondents that the property of the appellant firm could not have been leased out to a third party by only one of the partners of the firm in his individual capacity and that the very lease sought to be projected by the appellant would prove that the same was concocted for the purpose of avoiding payment of contribution to the Employees State Insurance Corporation. It is the further contention of the learned counsel for the respondents that there was no demarcation of the property comprised in Door No. 171, Tiruchengode Road, Pallipalayam into two portions and on the other hand, it has got a common door and a common electricity connection.

12. This Court paid its anxious consideration to the above said submissions made on both sides.

13. The alleged lease deed was produced by the appellant firm before the Court below and the same was marked as Ex.P5. As rightly pointed by the learned counsel for the respondents, Muthusamy, one of the partners of the appellant firm alone is said to have executed the lease deed in favour of Nagaraj, son of Subramaniam. Though the said Muthusamy has been referred to as a partner in the appellant firm, there is nothing to show that the said lease deed was executed by him on behalf of the firm, in other words on behalf of the partners of the firm. A xerox copy of the partnership deed dated 09.09.1983 was produced before the Court below and the same was marked as Ex.P1. From Ex.Pl it is obvious that the partnership itself was created only on 09.09.1983. It is surprising to hear from the appellant firm that within a month after the creation of the partnership, the power looms and that portion of the building in which 6 power looms had been installed (called Pattarai) were leased out to a third party. But the stamp paper for the preparation of Ex.P5-Lease Deed came to be purchased on 12.08.1983 viz., about a month prior to the creation of the partnership, that too, from a stamp vendor at Karur. A paltry sum of Rs. 600/- has been quoted to be the rent for the shed with six power looms and electricity service connection. The same will give rise to an inference that Ex.P5 was created using a old stamp paper in order to avoid payment of contribution to Employees State Insurance Corporation. It is also pertinent to note that the appellant firm did not choose to give the other particulars of the alleged lessee. Neither the alleged lessee nor one of the attestors of the lease deed was examined as a witness on the side of the appellant firm. In addition, in Ex.P5,

the name of the alleged lessee is noted as "Nagaraj" whereas his signature is found as "Nagarajan". Hence, this Court is of the considered view that the finding rendered by the Court below that Ex.P5 was nothing but a document created for the purpose of avoiding payment of contribution to the Employees State Insurance Corporation cannot be termed either infirm or defective.

14. Furthermore, the lease deed allegedly executed by one of the partners of the appellant firm in his individual capacity and not as representing the other partners will not be enough to prove that the machineries and the premises in which the machineries had been installed were leased out to a third party by the appellant firm so as to hold that the appellant firm is not running the power loom factory/establishment and that it is the lessee who is running the said unit. The alleged lease arrangement has got to be viewed only as a secret pact with a third party to avoid payment of contribution to the Employees State Insurance Corporation by the appellant firm. The appellant firm also failed to produce account books showing rents received, the particulars of the job work entrusted with the alleged lessee and the payments made for such job work. Hence, it is quite obvious that there is absence of cogent evidence to prove the alleged lease arrangement between the appellant firm and the third party. It will also give rise to an inference on preponderance of probabilities that the alleged lease arrangement is nothing but a concoction for avoiding payment of contribution to the Employees State Insurance Corporation. In view of the above said discussions, the questions identified as substantial question Nos. 1 and 3 are answered accordingly against the appellant firm and in favour of the respondents.

15. The next contention raised on behalf of the appellant is that the Employees State Insurance Corporation is barred from recovering contribution from the appellant firm for a period preceding three years from the date of inspection of the factory/establishment. The said contention of the appellant is liable to be rejected as it is factually incorrect. From Ex.R1, it is obvious that inspection was made on 27.06.1986 by the Insurance Inspector. His report shows that the factory went out of coverage with effect from 21.04.1985 as returns were not filed for the subsequent period also. The contribution for the period from 21.04.1985 to 31.03.1992 was assessed at Rs. 63,544.80 and interest for the same for the period from 01.04.1992 to 30.06.1993 was calculated at Rs. 16,325/- and a total demand of Rs. 79,879/- was made under Ex.R5. As it was not paid, a further demand under Form C-19 was made on 26.06.1998 for a sum of Rs. 33,629.39 towards interest and Rs. 79,879.80 towards contribution for the period from 21.04.1985 to 30.06.1993 and thus a total sum of Rs. 1,13,509.19 was demanded. It was also indicated in Ex.R6 notice that the interest for the delayed payment shall be Rs. 33.28 per day from 01.02.1998. The said facts made it clear that demands were made only for the periods not exceeding three years prior to the date of the respective inspection made by the Insurance Inspector.

16. However, the same is immaterial as the crux of the contention raised on

behalf of the appellant firm seems to be that no order levying contribution would be made for a period exceeding three years from the date of passing of such an order. It is the further contention made on behalf of the appellant that though such an order came to be passed, the limitation of five years prescribed u/s 77(1A)(b)proviso will be read into Sections 45A to 451 and that hence, recovery of contribution and demand of contribution for a period exceeding 5 years prior to the passing of the order determining the contribution shall stand barred by the said provision. In this regard, learned counsel for the appellant relying on a order passed by a learned single Judge of this Court in Hotel Guru Pvt. Ltd. Vs. The Deputy Director and Another, contended that the levy of contribution belatedly could be set aside on the ground of laches. Of course it is true that in the said case dealt with by the learned single Judge, show-cause notice for not remitting contribution came to be issued in 1993, but the Deputy Director passed an order after 8 years i.e., in 2001. The same made the learned single Judge to set aside the order on the ground of laches as the delay was construed to be inordinate.

17. The answer to the said contention is found in the judgment of the Hon''ble Supreme Court in E.S.I.C. Vs. C.C. Santhakumar, . Exactly the question of limitation raised by the employer was determined by the Apex Court against the employer. In the said case, which was dealt with by the Hon''ble Supreme Court, a contention came to be raised on behalf of the employer that the limitation prescribed in the proviso to Clause (b) of Section 77 (1-A) of the E.S.I. Act should be read into Sections 45A to 45I. After analyzing various sections in Chapter 4 and Chapter 6 of the E.S.I. Act and also referring to the circumstances in which Sections 38 to 45I found in Chapter IV of the Act came to be introduced by Act 44 of 1996 and also referring to the object sought to be achieved by such amendment, the Hon''ble Supreme Court held that for the mode of recovery provided under Sections 45C to 45I, which are found in Chapter IV of the E.S.I. Act, the limitation provided under the proviso to Clause (b) of Section 77(1-A) shall not apply. The following excerpts from the judgment of the Hon''ble Supreme Court will elucidate the position in this regard:--

6. Section 45A provides that in a case where a factory or establishment fails to furnish the returns or maintain or furnish the registers etc., the Corporation can determine the amount of contributions payable in respect of the employees of that factory or establishment. Such an order can be passed only after giving reasonable opportunity of hearing to the employer or the person in-charge of the factory or establishment. The order passed by the Corporation shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such an order as an arrear of land revenue u/s 45B or u/s 45C to 45I.

7. Section 45B provides that the contribution payable under the Act may be recovered as arrears of land revenue. Section 45C entitles the Authorised Officer to issue a certificate, specifying the amount of arrears. The Recovery Officer, on receipt of such certificate, is entitled to attach the property, arrest the employer

and appoint a receiver for the management of the movable and immovable properties of the factory or establishment. The provisions contained in Sections 45D to 45I lay down a detailed procedure for effecting the recovery.

8. The next set of relevant provisions quoted above is contained in Chapter VI. It relates to the adjudication of disputes and claims. Section 74 deals with the constitution of Courts. Section 75(2) inter alia provides mat the claim for recovery of the contributions from the principal employer shall be decided by the Employees'' Insurance Court. Sub-section (2B) was added by Act 29 of 1989. By this, it was provided that no matter, which is in dispute between the 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 50% of the amount due from him, as claimed by the Corporation. However, in the proviso, a power has been reserved by which the Court can waive or reduce the amount of deposit.

9. Section 76 relates to the institution of the proceedings.

10. u/s 77, the pivotal provision in these cases for commencement of proceedings has been made. A perusal of Section 77 shows that the proceedings before an Employees'' Insurance Court commence with the filing of an application. The application has to be filed within a period of three years from the date on which the cause of action arises. In Clause (a) of the Explanation, provision for the fixation of the date on which the cause of action for the claimant or his dependants arises has been fixed. In Clause (b), the starting point for the accrual of the cause of action for the principal-employer has been fixed. It provides that the date on which the Corporation makes the claim from the principal-employer for recovering the contributions including interest and damages shall be the date of cause of action.

11. In the present case, the controversy centers on the proviso to Clause (b) of Section 77(1 A). The crucial question is, "Does the proviso to Clause (b) of Section 77(1 A) fix the limit of time, in which the Corporation can make a claim from the employer, on the basis of the orders passed u/s 45?

12. Section 45A is a part of Chapter IV. Section 77 (1A) (b) proviso is contained in Chapter VI. The question is whether there is any connecting link between Chapter IV and Chapter VI.

13. Sections 38 to 45I are contained in Chapter IV while Chapter VI relates to Sections 74 to 83. Sections 45A and 45B in Chapter IV were introduced by Act 44 of 1966 with effect from 17.06.1967, in order to curb the default by the employers and to provide for an efficient method of recovery. The mode of recovery is provided under Sections 45C to 45I. On the other hand, Section 75 in Chapter VI relates to the commencement of proceedings before the E.S.I. Court. Proviso to Clause (b) of Section 77(1 A) was introduced by the Act 29 of 1989 with effect from 20.10.1989. A combined reading of the provisions indicates that no claim shall be made by the Corporation beyond five years, to which the claim

relates. The relevant section in Chapter IV, which deals with the order passed by the Corporation is Section 45A. Similarly, the relevant section in Chapter VI, which deals with the resolving of disputes between the employer and the Corporation by the E.S.I. Court, is Section 77 (1A).

14. A reading of Chapter IV, as a whole, makes it clear that there is no limitation prescribed. Section 38 imposes the obligation on the employer to pay contribution and, upon his failure, he is liable to pay interest on a recurring basis until it is paid. Section 40 imposes an obligation to pay on the principal employer in the first instance. This means, even if the employees were those of the contractors, it is the principal employer who has to pay. Section 44 mandates the employer to furnish proper returns so that the Corporation can scrutinize, assess and pass an order for a claim. Section 44 does not provide for any limitation and, originally, it did not prescribe any mode of recovery. Therefore, Act 44 of 1966 was introduced. Under this Act, Sections 45A and 45B were brought into force. Thereafter Sections 45C to 45I were introduced, prescribing the mode of recovery. The apparent purpose of introduction of these sections is to curb default by the employers and also to provide for an efficient method of recovery without any delay.

15. Section 45 A provides for determination of contributions in certain cases. When the records are not produced by the establishment before the Corporation and when there is no co-operation, the Corporation has got the power to make assessment and determine the amount u/s 45A and recover the said amount as arrears of land revenue u/s 45B of the Act. This is in the nature of a best judgment assessment as is known in taxing statutes. When the Corporation passes an order u/s 45A, the said order is final as far as the Corporation is concerned. u/s 45A(1), the Corporation, by an order, can determine the amount of contributions payable in respect of the employees where the employer prevents the Corporation from exercising its functions or discharging its duties u/s 45, on the basis of the material available to it, after giving reasonable opportunity. But, where the records are produced, the assessment has to be made u/s 75(2)(a) of the Act. Section 45A (2) provides that the order u/s 45A(1) shall be used as sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as arrears of land revenue u/s 45B. In other words, when there is a failure in production of records and when there is no cooperation, the Corporation can determine the amount and recover the same as arrears of land revenue u/s 45B. But, on the other hand, if the records are produced and if there is cooperation, the assessment has to be made and it can be used as a sufficient proof of the claim of the Corporation u/s 75 before the E.S.I. Court. So, the limitation of three years for filing an application before the Court, introduced by Act 44 of 1966, can only relate to the application u/s 75 read with 77(1 A). The order u/s 45A need not be executed by the Corporation before the E.S.I. Court u/s 77. As such, the amendment to Section 77(1A)(b) proviso by Act 29 of 1989 providing five years limitation has no relevance so far as orders passed by the Corporation u/s 45A are concerned.

Paragraphs 27 & 29 of the said judgment are also relevant. They read as follows:

27. If the period of limitation, prescribed under proviso (b) of Section 77(1 A) is read into the provisions of Section 45A, It would defeat the very purpose of enacting Sections 45A and 45B. The prescription of limitation u/s 77(IA)(b) of the Act has not been made applicable to the adjudication proceedings u/s 45A by the legislature, since such a restriction would restrict the right of the Corporation to determine the claims u/s 45A and the right of recovery u/s 45B and, further, it would give a benefit to an unscrupulous employer. The period of five years, fixed under Regulation 32(2) of the Regulations, is with regard to maintenance of registers of workmen and the same cannot take away the right of the Corporation to adjudicate, determine and fix the liability of the employer u/s 45A of the Act, in respect of the claim other than those found in the register of workmen, maintained and filed in terms of the Regulations.

28. What Section 75(2) empowers is not only the recovery of the amounts due to the Corporation from the employer by recourse to the E.S.I. Court, but also the settlement of the dispute of a claim by the corporation against the employer. While this is so, there is no impediment for the Corporation also to apply to the E.S.I. Court to determine a dispute against an employer where it is satisfied that such a dispute exists. If there is no dispute in the determination either u/s 45A(1) or u/s 68, the Corporation can straightway go for recovery of the arrears.

29. Section 77 of the Act relates to commencement of proceedings before the E.S.I. Court. The proviso to Section 77 of the Act cannot independently give any meaning without reference to the main provision, namely, Section 77 of the Act. Therefore, the proviso to Clause (b) of Section 77(1A) of the Act, fixing the period of five years for the claim made by the Corporation, will apply only in respect of claim made by the Corporation before the E.S.I. Court and to no other proceedings.

18. A reading of the said judgment will make it clear that limitation has been prescribed only for approaching the Employees State Insurance Court for determination of the contribution and the said limitation found in proviso (b) of Section 77(1-A) cannot be read into Sections 45A and 45B or 45C to I, which are found in Chapter IV of the Act, whereas Sections 75 and 77 are found in Chapter VI of the Act. It has been made clear that the employer of the Establishment coming under the purview of the E.S.I. Act is under an obligation not only to file the returns, but also to pay the contribution and that under certain circumstances, when access to the establishment by the officials is resisted or records are not produced by the establishment for the determination of the contribution, the Employees State Insurance Corporation is empowered to determine the contribution u/s 45A of the Act. Once the contribution is determined, the Employees State Insurance Corporation need not approach the Employees Insurance Court u/s 75 for the enforcement of the order determining contribution. It is for the employer/establishment to approach the said Court u/s 75 challenging the order. The employees State Insurance Corporation, apart from

the provisions found in Section 77 for the execution of the order, has got power u/s 45B to recover the contribution as an arrears of revenue in any one of the ways prescribed under Sections 45C to 45I. For such a recovery, without having recourse to the Court, no limitation is prescribed. Hence, the challenge made to the recovery notice by the appellant on the ground of limitation is bound to fail and the Court below is right in rejecting the contention of the appellant that no recovery of contribution could be made after 5 years on the assumption that the limitation of 5 years prescribed in the proviso to sub-clause (b) to Section 77(1-A) would be attracted for the measures contemplated under Sections 45A to 45I. This Court finds no substance in the challenge made to the said part of the order. Hence, the question identified as the second substantial question of law is answered accordingly against the appellant and in favour of the respondents. In view of the answers given to the substantial questions of law identified in this appeal, which answers are in favour of the respondents and against the appellants, this Court comes to the conclusion that there is no merit in the appeal challenging the order of Employees Insurance Court, (Court of Labour Judge), Salem dated 11.02.1998 made in E.S.I.O.P. No. 39 of 2000 and that the appeal deserves to be dismissed.

In the result, the Civil Miscellaneous appeal is dismissed. However, there shall be no order as to costs.

