(2017) 11 DEL CK 0465

In the Delhi High Court

Case No : First Appeal From Order No. 444 Of 2017

M/S. Pritha Offsets Pvt. Ltd — APPELLANT

Vs

Employee"S State Insurance Corporation & Anr — RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:
Employees State Insurance Act, 1948 — Section 75, 82, 85, 85(A), 85(E)

Citation : (2017) 11 DEL CK 0465

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Yog Verdhan

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J

C.M. No.41061/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

FAO No.444/2017 and C.M. No.41062/2017 (stay)

2. This first appeal is filed under Section 82 of the Employeesâ? State Insurance Act, 1948 (hereinafter referred to as â??ESI Actâ?) impugning the

judgment of the ESI Court dated 24.8.2017 by which the petition filed by the appellant/petitioner under Section 75 of the ESI Act was dismissed and

whereby the appellant/petitioner had challenged the demand notice dated 16.4.2015 for a sum of Rs.2,46,284/- plus interest.

3. At the outset, I must note that I have tried my level best to make some head or tail of the petition as also the evidence led by the appellant/petitioner

in the court below inasmuch as the sum and substance of the case of the appellant/petitioner is that appellant/petitioner is not liable because the

appellant/petitioner has cleared all dues under an amnesty scheme.

4. In my opinion in a case such as the present where a person claims that he has nill liability under the amnesty scheme, the court has to firstly know

the period for which the demands have been raised by the ESIC, out of those demands how much was the payment made by the appellant/petitioner,

if there was an amnesty scheme, then, what was the actual demand and how the same got reduced to a particular figure, and that how by the amnesty

scheme (giving details of the scheme), and how the reduced amounts as per the amnesty scheme stand paid by the appellant/petitioner. Unfortunately

the complete record of the trial court, including in the plaint and the evidence led on behalf of the appellant/petitioner, is completely vague on these

aforesaid aspects and which were sine qua nons for the appellant/petitioner to succeed on a cause of action of having paid necessary amounts under

an amnesty scheme.

5. The ESI Court below has while dealing with issue no.3 of challenge to the demand notice dated 16.4.2015 has referred to a letter dated 30.5.2007

issued by the ESIC and which showed that the appellant/petitioner had not deposited the amounts of Rs.3,24,913/-and Rs.62,142.97/- as per form C-19

and therefore the case could not be considered under the amnesty scheme. The relevant paras of the judgment of the trial court are paras 10 to 15

and these paras read as under:-

â??10. The onus to prove this issue is upon the petitioner. As per the demand notice dated 16.04.2015 amount of Rs.2,46,284/- was demanded

towards the interest and damages. Ld. counsel for petitioner has argued that in the year 2004, respondent corporation had filed the criminal complaint

against the petitioner company and its director U.C. Jain u/s 85(A) & 85(E) of ESIC Act. The criminal complaint for non payment of contribution was

filed for the period i.e. April 2002 to March 2003 and during the pendency of that complaint, on 26.03.2008, counsel for complainant had stated that

accused had deposited all the dues. Ld counsel has argued that this payment was made under amnesty scheme and, therefore, this demand vide letter

dated 16.04.2015 is unreasonable and false as dues were already settled under amnesty scheme. It is further stated that subsequently the respondent

corporation had been issuing warrant of arrest against the fictitious person V.C.

Jain whereas U.C. Jain was director who had already expired on

13.04.2008. After his death, company is being run by his son Sanjay Jain who has filed the present petition.

11. Ld counsel for respondent has denied the arguments made by counsel for petitioner and has categorically denied any amnesty scheme. He has

stated that demands were made by petitioner on actual basis after the date of personal hearing and, therefore, remaining amount on C-19 notice dated

03.02.2005 & 21.10.2015 are still pending.

12. It is an admitted case of the petitioner that petitioner company is covered u/s ESIC Act. It is pertinent to mention here that documents filed by the

petitioner have not been disputed by the respondent.

13. The case of the petitioner is that since the amount due towards contribution was paid under amnesty scheme, therefore, no interest on demands

can be levied. In this regard, order sheet dated 26.03.2008 is again perused and reproduced herein for the sake of convenience.

â??Present: Mr. Bhatia, for complainant. He states that accused had submitted all dues though beyond the prescribed period. Counsel for accused.

Accused exempted for today only. No pre-charge evidence led despite opportunity. Be put up for the same failing which case shall be disposed of as

per law. To come up 02.04.2008 at 02.00â??.

14. This order clarify that though the complainant has accepted that dues have been paid though it is specifically stated that accused had paid all the

dues but beyond prescribed period. It is worthwhile to note here that had these dues been paid under amnesty scheme, the case would not have been

listed for pre charge evidence thereafter. Perusal of further record reveals that an application for withdrawal u/s 85 & 85(A) of ESIC Act was moved

by the petitioner herein on 13.12.2006 and again on 07.03.2007 and in response to the letter dated 07.03.2007, a letter was written by Deputy Director

of ESIC to the petitioner dated 30.05.2007.

â??No D.Ins III/CDO/II-21-80 Dt.30.05.07

To

Sh Sanjay Jain, MD

C/o M/s Pritha Offsets Pvt Ltd

B-62/11, Naraina Ind. Area,

New Delhi.

Sub: Withdrawal of prosecution u/s 85 and Section 85(A) of ESI Act against under

Sir, This refer to your letter dt 07.03.2007 on the above cited subject:

In this connection it is informed that recovery certificate in form of C-19 amounting Rs.3,24,913/- and Rs.62,142.97/- was issued to you but

you have not deposited the same. As such you are requested to deposit the outstanding dues to that your case may be considered under

Amnesty Scheme.

The plea taken vide clause no.3 of your application that the notices were not received, is not justified because the notice are sent to the

address of unit as well as to the address of principal employer and further action is taken on the receipt of acknowledgment.

Dy. Director.â??

15. In this letter amount due has not been deposited and a request for depositing the outstanding amount has been made so that petitionerâ?s case

could be considered under the amnesty scheme. Pursuant to this letter, amounts were deposited. After the depositing of amount, no letter showing that

case of the petitioner was considered under the amnesty scheme has been filed on record. There is no correspondence with respect to amnesty

scheme between the parties after the letter dated 30.05.2007 issued by respondent corporation to petitioner in the absence of any such confirmation on

record or no dues certificate taken from the corporation, it cannot be said that this is the case wherein the dues were paid under amnesty scheme.

Though, admittedly the dues were paid, they cannot be recorded as the payment under the amnesty scheme. The demand letter dated 16.04.2015 has

been challenged, however, the calculation part of the demand has not been challenged by the petitioner. There is no pleading to this effect that amount

calculated is wrong or incorrect. The case of the petitioner fails in view of the non payment of dues of any document on record showing that amount

paid towards the contribution was under amnesty scheme. Therefore, this issue is decided against the petitioner and in favour of the respondent.â?

(underlining added)

6. In my opinion no fault whatsoever can be found with the aforesaid discussion and reasoning of the ESI court inasmuch as appellant/petitioner has

failed to file and prove as to what was the original amount due ordinarily in terms of the ESI Act, how the amount got reduced to a lesser figure under

which particular amnesty scheme, and as to how the amounts stood paid by the appellant/petitioner which will give the appellant/petitioner amnesty

under the amnesty scheme. Therefore in my opinion the ESI court was justified by referring to the letter of the ESI Corporation dated 30.5.2007 that

the appellant/petitioner having failed to deposit the requisite amount which was a pre-condition for consideration under the amnesty scheme, the

appellant/petitioner could not take any benefit of the amnesty scheme.

7. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.