
(2007) 08 MAD CK 0235
In the Madras High Court
Case No : C.M.A. No. 1232 of 2000

Regional Director, E.S.I. Corporation

APPELLANT

Vs

Nizam's International

RESPONDENT

Date of Decision : 18-08-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75

Citation : (2008) 116 FLR 386 : (2008) 2 LLJ 50

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant; K. Soundararajan and Jayakumari, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—C.M.A. No. 1232/2000 is preferred against the order dated March 11, 1997 made in E.S.I.O.P. No. 54/1989 on the file of the Principal Judge, City Civil Court, Chennai. Both the writ petitions are filed to quash the proceedings of the E.S.I. Corporation dated December 19, 2005 and June 16, 2006 respectively.

2. For the sake of convenience, the parties in these cases are referred according to their rank in the Civil Miscellaneous Appeal.

3. The common issue involved in all the three cases is that whether the respondent/writ petitioners is liable to pay E.S.I contribution or not.

4. The contention of the writ petitioners and petitioners in E.S.I.O.P. No. 54/1989 was that the factory is engaged in the business of manufacture and export of ready-made garments and covered under the E.S.I. Act with code No. 51-8699-18. The factory has registered its employees, paid contributions, maintained registers and subjected itself for inspection by the E.S.I. Corporation Inspectors. The E.S.I. Corporation issued C-18 notice on December 19, 1986, which was a show cause notice asking as to why an order u/s 45-A of the E.S.I.

Act, shall not be passed towards contribution of Rs. 604.90 in respect of packing charges for the period from April, 1982 to March, 1986. The first respondent sent a reply on January 19, 1987 followed with final reply dated September 26, 1988. Subsequently, on June 13, 1989 and June 16, 1989, the E.S.I. Corporation issued another C-18 notice for a sum of Rs. 180/- and Rs. 462.46 towards contribution in respect of labour charges paid towards packing for the period from April, 1986 to December, 1987, and in respect of tailoring charges for the period from April, 1986 to March, 1988, also a demand notice was issued for a sum of Rs. 1313.42 in respect of labour charges towards packing for the period from March, 1986 to December, 1987 and for a sum of Rs. 654.90 towards packing by referring demand notice date December 19, 1986. According to the respondent, in spite of the factory having submitted detailed replies for C-18 notices and denying the liability, the E.S.I. Corporation directed to recover the amount even before passing the order u/s 45-A. The said C-18 notices dated December 19, 1986, June 13, 1989 and June 16, 1989 were challenged before the E.S.I. Court.

5. The said E.S.I.O.P. was resisted by the E.S.I. Corporation by contending that the E.S.I.O.P. filed by the respondent/writ petitioners is not maintainable as it is premature to file the O.P. as C-18 notices are only show cause notices and only after determination orders are passed u/s 45-A of the E.S.I. Act, the same can be challenged by the first respondent u/s 75 of the Act.

6. The E.S.I. Court, without framing an issue about the maintainability of the O.P., gone into the merits of the matter and allowed E.S.I.O.P. No. 54/1989 by order dated March 11, 1987. The said order passed by the E.S.I. Court is challenged in this Appeal, on the substantial question of law, that is, whether the order of the E.S.I. Court, Madras, is not liable to be set aside on the short ground that the OP is not maintainable against the show cause notices.

7. The said question of law being a preliminary issue to be decided in this matter, the same is considered in this Appeal and the decision to be arrived at, will answer the points raised in the Civil Miscellaneous Appeal and the order passed in Civil Miscellaneous Appeal will decide the issue raised in the writ petitions.

8. Heard the learned Counsel appearing on both sides.

9. Admittedly, C-18 notice was challenged by the respondent/writ petitioners in E.S.I.O.P. No. 54/1989 u/s 75 of the E.S.I. Act. The maintainability of the E.S.I.O.P u/s 75 of the Act against the show cause notices was considered by this Court in C.M.A. No. 209/1994 and by judgment dated February 10, 2000, this Court in paragraphs 4 to 6 held as follows:

4. It is not disputed before me that the proceeding taken before the E.S.I. Court u/s 75 is premature, having been initiated even before any order had been passed by the State insurance Corporation is not maintainable. However, the learned Counsel for the appellant has rightly pointed out that in the event of the E.S.I. Court having held that the Appeal was not maintainable, the E.S.I. Court

ought not to have been gone into merits of the assessment

5. Though the learned Counsel for the respondent points out that the employee himself adduced evidence and invited the finding against himself, it is settled proposition of law, that once the forum decides that either it has no jurisdiction or that the proceedings were not maintainable, it will not be open to the authority to go into the merits and decide the same one way or other. Therefore, as the lower Court rendered findings against the employee, the same are liable to be set aside.

6. While agreeing with the view of the lower Court that the Appeal u/s 75 of the E.S.I. Act is not maintainable, the findings rendered therein are liable to be set aside. The employee will furnish the reply to the show cause notice and then the authorities will proceed front that stage, after giving personal hearing to the employee. With the above observations, this Appeal is ordered accordingly. No costs.

10. In W.P. No. 44418/2006, C-18 notice issued by the E.S.I. Corporation was challenged and by order dated November 17, 2006, this Court dismissed the writ petition on the ground that as against the show cause notice, writ petition is not maintainable and it is for the writ petitioner to file objections and only after passing final orders, the order passed can be challenged.

11. The learned Counsel appearing for the respondent/writ petitioners tried to argue the matter on merits. However, since I am deciding only the preliminary issue with regard to the maintainability of the E.S.I.O.P. against the show cause notices, I am not inclined to traverse into the merits of the case. The question of law raised by the appellant in C.M.A. is answered in favour of the appellant holding that as against C-18 notice, the Appeal filed u/s 75 of the E.S.I. Act before the E.S.I. Court is not maintainable. The Appeal is allowed and the respondent/writ petitioners is directed to furnish detailed reply for the C-18 notices within four weeks from the date of receipt of copy of this order. On receipt of the said notices, the appellant/E.S.I. Corporation is directed to consider the same and pass orders on merits u/s 45-A of the E.S.I. Act. If any adverse order is passed by the appellant against the respondent, it is open to the respondent/writ petitioners to challenge the same before the E.S.I. Court u/s 75 of the E.S.I Act. The CMA is allowed with the above direction. No costs.

12. In the writ petitions, the writ petitioner challenged the order passed u/s 45-A of the E.S.I. Act. From the perusal of the typed set of papers and the affidavit filed in support of the writ petitions, the stand taken by the writ petitioners is that since C-18 notice issued by the E.S.I. Corporation has already been quashed by the E.S.I. Court, it need not answer to C-18 notice for the subsequent years also and no reply having been received the E.S.I. Corporation passed orders u/s 45-A on the basis of the materials available by way of best assessment.

13. The order passed by the E.S.I. Court challenging C-18 notice having now been set aside, the petitioner is bound to give reply to the C-18 notices to the

subsequent periods. Since the impugned orders in these writ petitions are passed u/s 45-A without getting reply from the petitioners in view of the earlier order of the E.S.I. Court, I am of the view that interest of the justice would be met by setting aside the orders passed u/s 45-A, which are impugned in these writ petitions with a direction to the E.S.I. Corporation to issue fresh notices under (sic Form) C-18, get objections from the writ petitioners, and if it is not convincing fresh orders can be passed u/s 45-A of the E.S.I. Act, in accordance with law. It is also made clear that if any adverse order is passed by the E.S.I. Court (sic ESI Corporation), the writ petitioner can file appeal u/s 75 of the E.S.I. Act.

14. Both the writ petitions are allowed with the above direction. It is made clear that the merits of the contentions raised by the writ petitioners/respondent in C.M.A. are not considered in any manner and the entire matter is left open to be decided by the E.S.I. Court. The civil miscellaneous appeal and the writ petitions are allowed to the above limited extent. No costs.