(1981) 04 OHC CK 0003

In the Orissa High Court

Regional Director, E.S.I.C. APPELLANT

Vs

Indian Aluminium Co. Ltd. RESPONDENT

Date of Decision : 08-04-1981

Acts Referred:

Employees State Insurance Act, 1948 — Section 85B

Citation : (1981) 51 CLT 549 : (1982) 1 LLJ 84

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Judgement

N.K. Das, J.—The respondent is a factory which is covered under the Employees'' State Insurance Act of 1948. It has to deposit its contribution for the employees and has to send intimation to the Employees'' State Insurance Corporation. This fact is not disputed. It is also not disputed that the respondent deposited the contribution for the period ending 27-9-1975 in time but posted the card intimating the payment on 15-9-1975. According to regulation, this card should have reached the appellant by 9-11-1975 but it was received on 25-11-1975. Accordingly there was a delay of sixteen days in sending the intimation of payment to the appellant. Similarly also the respondent deposited the contribution for the period ending 26-3-1976 in time but posted the card on 8-5-76 which was received by the appellant on 11-5-1976 and there was a delay of two days because the card should have reached by 9-5-76. The respondent has also paid interest as required under regulations for delay in sending the intimation of deposit of contribution. The appellant sent notice to the respondent claiming damages for delay in sending the cards intimating deposit of contribution. This claim of the appellant has been challenged by the respondent. The District Judge, Sambalpur who happens to be the appropriate authority known as Employees'' Insurance Court has disallowed the claim of the appellant for damage. This appeal is directed against that order.

2. There is no dispute about the fact that on both the occasions, namely, for the period ending on 27-9-1975 and 27-3-1976 deposits of contributions have been

made in time. It is also not disputed that there was delay in sending intimation of sixteen days on the first occasion and two days on the second occasion. It is not disputed that the contributions having been made within time as required under the law (21 days from the period ending), the intimation is to reach the appellant within forty-two days with the period ending. But on both the occasions, there has been delay in receipt of the intimation by the appellant. This intimation amounts to evidence of payment of contribution.

3. According to Regulation 31A if the amount of contribution is not paid within the prescribed time the employer is liable to pay interest. This position is not disputed. Damages have been claimed u/s 85-B of the Act which provides that where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer such damages not exceeding the amount of arrears as it may think fit to impose. Mr. Parida, the learned Counsel for the appellant contends that by virtue of the proviso to Regulation 31-A, it would be deemed that the respondent has not paid its contribution. Regulation 31-A, before amendment, provided that the employer who fails to pay contributions within the periods specified in Regulation, 31 shall be liable to pay interest at the rate of 6 per cent per annum in respect of each day of default or delay in payment of contributions. By amendment of 1977, a proviso has been added which runs as follows:

Provided that where the contribution is paid by affixing the contribution stamps, the employer shall be deemed to have not paid the contributions in time if he fails to submit the contribution cards within the time prescribed under Regulation 26.

Mr. Parida contends that by virtue of this proviso and on the admitted position that intimation cards were not sent in time, it would be deemed that the respondent has not paid the contribution. It should be remembered that the period for which the claim is made relates to the years 1975 and 1976, which means, prior to the amendment by adding the proviso came into existence. It is clear from the proviso that it has no retrospective effect. Therefore, the present case is to be covered by the proviso as it stood prior to the amendment of 1977 which means that if an employer fails to pay the contribution within the time then he will be liable to pay interest. There was no proviso existing in 1975 or 1976 that if the contribution card is not sent within the specified period, it would be deemed that he has not paid the contribution.

4. Section 85-B of the Act provides that if the contribution is not paid in time as prescribed, namely, twenty-one days from the period ending, then the Corporation can claim damages. The stand of the appellant is that by virtue of the amendment added to the regulation in the year 1977, it should be deemed that the respondent has not paid the contribution. For the reasons stated above this contention cannot be accepted. As the present case is covered by the provisions of Regulation 31-A prior to its amendment of 1977, no liability of the respondent will accrue u/s 85-B of the Act.

5. This question may also be considered from another stand point. The proviso under Regulation 31-A relates to deeming proviso of non-payment of contribution for the purpose of payment of interest. It cannot be stretched so as to cover the penal provision as provided u/s 85-B of the Act. On the aforesaid analysis, I do not find any reasonable or compelling ground to interfere with the findings of the Employees'' Insurance Court.

6. In the result, the misc. appeal fails and is, accordingly, dismissed. In the circumstances of the case, there will be no order as to costs.

