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M/S. GOETZE (INDIA) LTD.

v.

EMPLOYEES STATE INSURANCE CORPORATION
(Civil Appeal No. 8432 of 2001)

JULY 7, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Employees' State Insurance Act, 1948

s.45(A) – Employer's contribution – Delayed payment C *of – Liability of employer to pay interest – Held: Liability to pay interest is statutory - There is no power of waiver – Therefore, any question of compromise or settlement, does not arise-Interest.*

D **The demand raised by the respondent-Corporation for contribution under the Employees' State Insurance Act, 1948 on the component of efficiency bonus was challenged by the appellant-employer and ultimately the latter agreed to pay and paid the same. Thereafter the Corporation demanded payment of interest on the amount** E **paid belatedly, which was questioned by the appellant in a writ petition before the High Court. The stand of the appellant was that the amount was paid under a compromise arrived at between the parties as was apparent from the order of the ESI Court to the effect that thereafter noth-** F **ing was payable by the appellant. The case of the Corporation was that there was statutory liability to pay the interest and, therefore, there was no question of any compromise to waive the interest. The High Court dismissed the writ petition. Aggrieved, the employer filed the instant** G **appeal.**

Dismissing the appeal, the court

HELD: 1.1. As there was delay in making the payment of the contribution, the Corporation issued notice

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on 29.6.1990 at the first instance. Thereafter the order was passed under Section 45(A) of the Employees' State Insurance Act,1948 on 23.7.1992. The same was challenged before the ESI Court in which an interim stay was granted on 9.10.1992. During the pendency of the matter there was re-verification and the quantum payable by the appellant was worked out. The liability to pay interest is statutory. There is no power of waiver. The question of any compromise or settlement does not really arise. [Para 6] [194-D-F]

1.2. Even otherwise, the order of the ESI Court referred to and relied upon by the appellant is of no assistance in this regard. It only noted statement of the appellant that he had deposited contribution payable. The reference to "no further due" is obviously relatable to the contribution payable and nothing beyond that. [Para 6] [194-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8432 of 2001

From the final order dated 19/12/2000 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 13918/2000

M.L. Varma, Meera Mathur and Satya Mitra for the Appellant.

C.S. Rajan, Annupam Mishra and V.J. Francis for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to be order passed by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant.

2. Controversy lies within a very narrow compass.

Employees State Insurance Corporation (in short the 'Corporation'), the respondent herein raised a demand for contribu-

A tion under the Employees State Insurance Act, 1948 (in short the 'Act') on the component of efficiency bonus for the period January 1988 to September, 1989 by order dated 23.7.1992. The demand was challenged before the ESI Court under Section 75 of the Act. Pending the proceedings before the ESI Court, Corpora-
B tion by letter dated 1.3.1997 asked for production of record for the purpose of re-verification for the period from 1989 to 1991 and from 1992 to 1994 to determine the amount payable.

The respondent Corporation on re-verification determined the actual amount payable as follows:

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(a) 1/88 to 3/89 as Rs.2,26,454/-

(b) 4/89 to 3/94 as Rs.5,28,071/-

Total Rs.7,54,525/-

D Appellant agreed to pay the contribution and paid the same in October/November, 1997.

Appellant took the stand that there was a bonafide dispute about eligibility. Since eligibility to "efficiency bonus" under the scheme was subject to attendance of 50 days in a quar-
E ter is payable and paid quarterly. Appellant took the stand that it falls outside the definition of wages under Section 2(22) of the Act. Appellant took the plea that its stand was supported by a judgment of this Court in *Whirlpool of India Ltd. v. Employees' State Insurance Corporation* [2000(3) SCC 185]. The ESI Court
F disposed of the matter on 6.1.1998 taking note of the stand of the appellant that it had deposited the definite amount after reverification and the bank guarantee furnished by the appellant was released. On 11.1.2000 the Corporation wrote a letter to the appellant demanding payment of interest on the amount paid
G to the Corporation for the period from 1988 to 1994 as covered by order dated 6.1.1998 and directed payment of interest amounting to Rs.4,61,825/-. The appellant questioned the demand before the High Court by filing a writ petition. The appellant's stand was that a compromise had been arrived at
H as is apparent from the order of the ESI Court to the effect that

nothing was payable by the appellant. Corporation took the stand that the liability to pay interest was statutory and, therefore, there could not have any compromise. In any event the submission of the appellant that nothing further was payable as ESI contribution was noted and therefore, the bank guarantee was released. There was no question of any compromise to waive the interest which is not statutorily permissible. The High Court accepted the stand and dismissed the writ petition.

3. In support of the appeal learned counsel for the appellant submitted that there was an order of stay and therefore the question of any interest does not arise. Further when the counsel for the Corporation himself stated that nothing further was payable, it clearly indicated that there was a statement on the compromise for waiver of interest. It was pointed out that with a view to buy peace the appellant had agreed to pay the amount though this case was clearly covered by *Whirlpool's case* (supra).

4. Learned counsel for the respondent on the other hand submitted that there is no question of any compromise to waive interest because the same is statutorily payable. There cannot be any compromise without any authority when there is no provision for any compromise or statement. It is therefore stated that the High Court's view is right.

5. In order to appreciate rival submissions it would be necessary to take note of few provisions, Sections 39 and Regulations 31 and 31A reads as follows:

"Section 39- Contributions

xx xx xx

5(a) 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 12% per annum or at such higher rate as may be specified in the regulations till the date of its actual payment."

A "*Regulation 31* – Time for payment of contribution

An employer who is liable to pay contributions in respect of any employee shall pay those contributions within 21 days of the last day of the calendar month in which the contributions fall due;

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Provided that where a factory/establishment is permanently closed, the employer shall pay contribution on the last day of its closure."

"*Regulation 31A* – Interest on contribution due, but not
C paid in time

An employer who fails to pay contribution within the periods specified in regulation 31, shall be liable to pay interest at the rate of 12% per annum in respect of each day of default
D or delay in payment of contribution."

6. As there was delay in making the payment of the contribution the Corporation had issued notice on 29.6.1990 at the first instance and thereafter the order was passed under Section 45(A) of the Act on 23.7.1992. The same was challenged
E before the ESI Court in which an interim stay was granted on 9.10.1992. During the pendency of the matter there was re-verification and the quantum payable by the appellant was worked out. The liability to pay interest is statutory. There is no power of waiver. The question of any compromise or settlement does
F not really arise. Even otherwise the order of the ESI Court referred to and relied upon by the appellant is of no assistance to the appellant. It only noted statement of the appellant that he had deposited contribution payable. The reference to "no further due" is obviously relatable to the contribution payable and
G nothing beyond that.

7. Above being the position, the appeal is sans merit, deserves dismissal, which we direct. There shall be no order as to costs.

H R.P. Appeal dismissed.