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IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL UNDER E.S.I. ACT NO.6 of 2002

M/s Syndicate Marine Enterprises,
having office at B-15,
Dharmanand Kossambe Building,
Vasco-da-Gama,
Goa - 403 802

... Appellant

v e r s u s

1. The Regional Director,
Regional office,
Employees State Insurance Corporation,
ESIC Building,
Colaba, Bombay.

2. The Deputy Regional Director,
Sub-Regional Office,
Employees State Insurance Corporation,
Defence Colony,
Porvorim, Goa.

... Respondents

Mr. D. J. Pangam, Advocate for the appellant.

Ms. A. Agni, Advocate for the respondents.

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CORAM: C. L. PANGARKAR, J.

JUDGMENT RESERVED: 17.02.2009.

JUDGMENT PRONOUNCED : 27.02.2009.

JUDGMENT:

This appeal is preferred by the appellant feeling aggrieved by the rejection of the application filed by the appellant before the Employees State Insurance Court at Margao under Section 77 of the Employees' State Insurance Act, 1948.

2. The facts giving rise to the appeal are as follows:

The Inspector of the respondent no.2 visited the establishment of the appellant on

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18.11.1981 at Sancoale Industrial Estate where he was told that the entire records were maintained by the Head Office at Vasco-da-Gama and therefore, the said inspector went to Vasco-da-Gama at the Head Office. Partner of the appellant's firm produced all the records before the inspector. He produced the three attendance registers, one pertaining to the workshop at Sancoale, the second of the ship division or ship repairs and the third was of the Head office of the appellant. It was found by the said inspector that two persons were engaged at the workshop, nine persons were engaged in ship repairs and three persons were engaged as office staff at the Head office. There was thus staff of fourteen persons working. Therefore, the respondent no.1 sent a letter dated 21.01.1982 informing the appellant that a Code number has been allotted and directed the appellant to register the employees working with it by filing declaration. The respondent no.2 by letter

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dated 18.02.1983 and 12.05.1983 informed the appellant that the contribution to be made by it has been worked out to Rs.9,889.55 on ad-hoc basis and directed the appellant to pay the contribution. The appellant replied that it was not covered by the Act and was not liable to pay any contribution. Ultimately an order under Section 45-A of the Act came to be passed, which order was challenged by filing an application under Section 77 of the E.S.I. Act, 1948. By that order under Section 45-A of the Act, the appellant was asked to pay a sum of Rs.25,726.35 for a period from 01.08.1980 to May, 1985 plus interest amounting to Rs.6,818.45. The said order was challenged before the E.S.I. Court by filing an application under Section 77 of the Act. The learned Judge of the Trial Court found that since more than ten employees were working the appellant was covered by the provisions of the E.S.I. Act and the application under Section 77 of the Act was

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barred by limitation. Holding so, he dismissed the application. Being aggrieved by that order, this appeal has been preferred.

3. The appeal was admitted by this Court on the following three substantial questions of law:-

(i) Whether the establishment of steel fabrication and machine shop at Sancoale Industrial Estate; Ship Repairs Division at MPT and Head Office at Dharmanand Kossambe Building, at Vasco-da-Gama, Goa, can be amalgamated to bring the three distinct activities under the provisions of ESI Act, as the said activities are totally distinct and independent and they are not connected to each other, as neither they are in the same premises, nor in the precincts therefore and neither the employees employed in the respective units are in connection with the work of each individual establishment as required

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under Section 2 (9) read of Notification dated 21.06.1977 ?

(ii) Whether the employees at ship repairs unit in MPT were "Dock workers" and as such were not covered under the provisions of ESI Act ?

(iii) Whether the ESI Court has committed error in law by holding that application under section 77 was barred by limitation, as cause of action arose when the Code number was allotted to appellant on 21.01.1982, in as much as order which was impugned before the ESI Court was dated 10.06.1987 passed under section 45-A and as such the application which was filed on 23.06.1987, was well within the prescribed period of limitation ?

4. The learned counsel Shri Pangam raised mainly two grounds to contend that the establishment is not covered under the ESI Act. The first ground

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that was raised by him was that there must be fulfillment of the four conditions before the Notification issued by the Government of Goa on 21.06.1977 could be applied. In order to understand his submission, it is necessary to reproduce here the said Notification:

“Any premises including the precincts thereof whereon ten or more persons but in any case less than twenty persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, but excluding a mine subject to the operation of the Mines Act, 1952 (Central Act 35 of 1952), or a railway running shed or an establishment which

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is exclusively engaged in any of the manufacturing processes specified in clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (Central Act 34 of 1948)"

5. According to him the four conditions are as follows:

- (i) There must be some premises or precincts,
- (ii) Ten or more workers must be engaged,
- (iii) They must be engaged on wages on any day of the preceding year and
- (iv) Manufacturing process should be carried on with the aid of power.

He submits that one of the units of the appellant is of repairs to ship which is a ship

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division. He contends that there are no premises as such utilised for the purpose of the repairs since the ships are repaired while they are berthed in the dock or sea. He contends that in no case the sea or high sea could be treated as premises. There can be no doubt that the repairs to the ship are carried out when the vessels or ships are berthed in dock or at times even at high sea. They may not be berthed in any premises as such, yet it cannot be said that because of that reason ESI Act cannot be applied to it. As far as repairs to ships is concerned the employees of the appellant may be required to go to different ships for its repairs. But the premises that are to be treated as premises in the instant case would be the place where from instructions are issued to employees to repair any particular ship and the place from where this work is supervised. For instance there could be agencies or establishments which undertake repairs to heavy machinery which

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cannot be moved. Such a machinery is never brought to the workshop of the repairer, but they are repaired by sending skilled employees on the site for repairs. Such an establishment though may not have a workshop as such yet the establishment where it receives the orders for repairs and supervises the work would all the same be premises which would fall under the word premises. I therefore, do not find any substance in the contention of Mr. Pangam that there are no premises as such for repairs of the shop and therefore the Act would not apply.

6. The second ground that was raised by him is that all three units are separate and none of them has ten or more employees. He submits that therefore, the condition no.2 is nor fulfilled. This submission is also not correct. To decide whether different units are part of the same establishment, the Court has to assess the extent of functional

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integrity between them and also whether one unit can exist conveniently and reasonably without the other. Following are the three units:

- (a) Office i.e. administrative work premises
- (b) Department of repairs to ship and
- (c) steel fabrication.

Without there being an office i.e. Administrative Department neither of the two other departments can work independently nor can it exist. The management of both the other units is looked after by the Administrative Department alone. Further, the appellant in his evidence admits that in the workshop at Sancoale they are manufacturing and repairing the small parts and pieces. He also admits that some parts required for the repairs of the ship are manufactured at the Sancoale workshop. It is further admitted by him that he carries out ship

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repairs activities in the name and style of Syndicate Marine Enterprises. He admits that for administrative work of both the workshop they have a common office. It is thus, clear that neither of the units can be run conveniently and independently of the other. Thus the respondents are justified in clubbing all the units together. The office has a staff of 3 persons and ship repairs unit has a staff of 9 persons. It is clear therefore, that the total number of employees even if two units are clubbed exceeds 10. The learned Judge of the Trial Court therefore, did not fall in error in holding that the units were rightly clubbed together by the respondent by implementation of the ESI Act, 1948.

7. The next question required to be considered is whether the application under Section 77 of the Act was barred by limitation. The learned counsel for the appellant submits that the cause of

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action arises only when the claim is made and such an application under Section 77 of the Act is required to be filed within 3 years from the date of the claim. The learned Judge of the Trial Court has held the application to be time barred because the appellant admitted in the evidence, the application, to be time barred. The question as to whether the application is barred by limitation or not cannot be decided upon an admission of a witness in evidence, in this particular case. The question as to on which date the cause of action arose and which facts constitute the cause of action has to be first determined. It seems the learned Judge found that the date on which the Code number was allotted is the date of cause of action. The date of cause of action cannot be treated as the date of allotment of code number. Even if a witness may say that allotment of code number is treated by him as cause of action the Court cannot proceed on such

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assumption. It must be seen which one of the two would be treated in law as a cause of action. In Section 77, the word used is claim. Claim has to be necessarily interpreted to mean a demand of certain sum of money payable as contribution. Thus the cause of action would arise when a claim for specific sum of money is made as contribution. In the instant case the claim for contribution of Rs.25,726.35 was made on 10.06.1987 and the application under section 77 was filed on 23.06.1987. It is thus, filed within three years. The application therefore, could not be said to be barred by limitation.

8. The learned Judge has held that the employees of the appellant cannot be called Dock Workers because they are not employed in connection with the work of loading and unloading of ships or any other functions of navigation. In view of the fact that they are not in fact connected with loading

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and unloading or actual function of navigation, they cannot be said to be Dock Workers. I do not find any reason to interfere with this finding of the Trial Court, in view of the decision of this Court in **M/s Italab (Goa) Pvt. Ltd. v. Deputy Regional Director** reported in **Appeal under E.S.I. Act No.1 of 2001**, on 12.09.2008 at Goa.

9. In view of this fact, I concur with the view of the Trial Court that the appellant is governed by the provisions of the Employees' State Insurance Act. I see no merit in this appeal and it is dismissed.

C. L. PANGARKAR, J.

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