2025 INSC 1455

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14858 OF 2025
(ARISING OUT OF SLP (CIVIL) NO. 12442 OF 2024)

M/S. Carborandum Universal Ltd. APPELLANT(S)

VERSUS

ESI Corporation RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. This civil appeal by special leave is directed against the judgment and order dated 12.10.2023 passed by the High Court of Judicature at Madras (briefly 'the High Court' hereinafter) in C.M.A. No. 1284 of 2017 (*M/s. Carborandum Universal Limited Vs. ESI Corporation*).

3. Be it stated that appellant had filed the related appeal before the High Court assailing the legality and

validity of the order dated 06.07.2015 passed by the Employees Insurance Court (Principal Labour Court), Chennai in E.I.O.P. No. 262 of 2001. By the aforesaid order dated 06.07.2015, the Employees Insurance Court upheld the order dated 17.04.2000 passed by the Regional Office (Tamil Nadu), Employees State Insurance Corporation holding that a sum of Rs. 5,42,575.53 is statutorily due as arrears of contribution and payable by the employer i.e. the appellant for the period from 01.08.1988 to 31.03.1992. Appellant was directed to pay the aforesaid amount with interest at the rate of 12 percent per annum upto 31.08.1994 and at the rate of 15 percent per annum from 01.09.1994. The aforesaid order dated 17.04.2000 was passed under Section 45A of the Employees State Insurance Act, 1948 (briefly 'the Act' hereinafter).

4. For proper appreciation, relevant facts may be briefly noted.

5. Appellant is a company and is engaged in the business of manufacturing various products. It is covered under the Act. It has been allotted an employers' code

and it is stated that the establishment was regularly making statutory contributions as required under the Act for its covered employees.

6. On 27.11.1996, respondent Employees State Insurance Corporation (for short 'the corporation' hereinafter) issued show cause notice alleging that appellant had neither paid contributions as per requirement of the Act nor had submitted returns of contribution for the period from August, 1988 to March, 1992. The show cause notice alleged non-submission of returns and non-production of complete record during earlier inspections and on that basis, proposed an assessment of Rs. 26,44,695.00 under various heads in terms of Section 45-A of the Act. Appellant was asked to show cause within 15 days as to why assessment should not be made as proposed while affording an opportunity of personal hearing.

7. Upon receipt of show cause notice, appellant submitted its explanation and participated in the personal hearings on various dates. In the course of the personal hearings, representative of the appellant

produced ledgers for the show cause period. That apart, relevant cash books, bank books, journal vouchers, relevant bills and contractor's records as well as returns of contributions were produced for verification.

8. However, respondent confirmed that a sum of Rs. 5,42,575.53 was statutorily due as arrears of contribution and payable by the employer i.e. the appellant in respect of the claim covered by the show cause notice. Accordingly, order dated 17.04.2000 was passed by the corporation under Section 45-A of the Act ordering that contributions totalling Rs. 5,42,575.53 for the period from 01.08.1988 to 31.03.1992 were finally determined and directed to be paid with interest at the rate of 12 percent per annum upto 31.08.1994 and at the rate of 15 percent per annum from 01.09.1994 failing which it was stated that the aforesaid amount would be recovered under Sections 45-C to 45-I of the Act.

9. Being aggrieved, appellant filed a petition under Section 75(1)(g) of the Act before the Employees Insurance Court which was registered as E.I.O.P. No. 262/2001. The Employees Insurance Court after due

consideration framed the following questions for consideration:

(i) whether the order of the respondent dated 17.04.2000 was liable to be set aside?

(ii) whether the petitioner was liable to pay contribution, if so, to what extent?

(iii) to what relief?

9.1. Documents were exhibited and evidence adduced by both the sides. After hearing the matter, the Employees Insurance Court rejected the contention of the appellant that it was not liable to pay the contribution as demanded. Claim of the appellant that the impugned order was passed on wrong calculation and therefore the same was liable to be set aside was repelled. The Employees Insurance Court also recorded that appellant did not produce necessary documents either during the personal hearings before the corporation or before it. Therefore, it accepted the contention of the respondent that the petitioner did not place before it necessary documents. Objections as to limitation and jurisdiction were rejected. Accordingly, the petition was dismissed by

the Employees Insurance Court *vide* the order dated 06.07.2015.

10. Assailing the aforesaid order dated 06.07.2015, appellant preferred appeal before the High Court under Section 82 of the Act. *Vide* the judgment and order dated 12.10.2023, the High Court recorded the facts as under:

> Admittedly, the respondent by invoking the power under Section 45-A of the ESI Act issued show cause notice dated 27.11.1996 to the appellant seeking to show cause as to why a sum of Rs. 26,44,695.00 be not recovered from the appellant, pursuant to which, the appellant appeared for personal hearings through authorized representative and produced relevant records. Thereafter, the respondent passed an order dated 17.04.2000, directing the appellant to pay a sum of Rs. 5,42,575.53 as contribution for the period from 01.08.1988 to 31.03.1992 together with interest at the rate of 12% upto 31.08.1994 and at 15% from 01.09.1994. Challenging the same, the appellant filed E.I.O.P. No. 262 of 2001 before the Employees State Insurance Court at Chennai under Section 75(1)(g) of the Act.

10.1. Thereafter, the High Court held that there is no limitation for initiating proceedings under Section 45-A of the Act. Appellant was given show cause notice and

was also afforded opportunity of personal hearing. It was only after considering the record produced by the appellant that the corporation passed the order dated 17.04.2000. Employees Insurance Court had properly appreciated the factual aspects and had rightly dismissed the petition filed by the appellant. Hence, the order dated 17.04.2000 as well as the order of the Employees Insurance Court dated 06.07.2015 required no interference. Consequently, the appeal filed by the appellant was dismissed.

11. Learned counsel for the appellant submits that appellant has one of its factories at Thiruvottiyur, Tamil Nadu. All the eligible employees are covered under the Act. Their respective contributions are remitted from time to time without any default.

11.1. Notwithstanding the above, appellant received show cause notice dated 27.11.1996 from the respondent claiming employees state insurance (ESI) contributions of Rs. 26,44,695.00 for the period from 1988 to 1992 under Section 45 of the Act.

11.2. Appellant submitted reply and also attended the personal hearings. In the hearings, it had produced

all the relevant and relatable records. Respondent *vide* the order dated 17.04.2000 reduced the claim from Rs. 26,44,695.00 to Rs. 5,42,573.53 together with interest at the rate of 12% per annum upto 31.08.1994 and at the rate of 15% per annum thereafter from 01.09.1994.

11.3. Aggrieved by the aforesaid order dated 17.04.2000, appellant moved the Employees Insurance Court under Section 75(1)(g) of the Act.

11.4. Learned counsel for the appellant submits that the main ground urged before the Employees Insurance Court was that respondent was not competent to invoke the jurisdiction under Section 45A of the Act. Remedy available to the respondent was under Section 77 (1-A) of the Act but the said provision had a limitation of five years. To circumvent the limitation, recourse was taken to Section 45A. However, the Employees Insurance Court dismissed the challenge of the appellant *vide* the order dated 06.07.2015. Contention of the appellant that respondent could not have initiated any proceeding

under Section 45A of the Act was not considered by the Employees Insurance Court.

11.5. Thereafter, appellant filed appeal before the High Court which was however dismissed *vide* the impugned judgment and order dated 12.10.2023. Here also, the question of jurisdiction and limitation was not considered by the High Court though specifically raised.

11.6. Learned counsel for the appellant submits that Section 45A of the Act which provides for determination of contribution applies to cases where records are not maintained or are not produced by the factory or establishment before the corporation and there is no cooperation. In other words, provisions of Section 45A of the Act can be invoked only in respect of a factory or an establishment where no returns, particulars, registers or records are submitted or furnished or maintained in accordance with the provisions of Section 44 of the Act; or there is obstruction to the discharge of duty by officials of the corporation under Section 45.

11.7. It is the submission of the appellant that it had produced the record before the corporation during the course of the hearings. Whether such records were adequate or not cannot be the subject-matter of Section 45A proceedings which are summary in nature.

11.8. Adverting to Section 77(1-A)(b) of the Act, learned counsel submits that the said provision would kick-in with respect to the proceedings to be initiated by the corporation for recovery of contribution, including interest and damages, from the employer. This provision has a limitation period of five years.

11.9. In the instant case, alleged recovery is for the period from 1988 to 1992. Show cause notice was issued on 27.11.1996. Claim made by the respondent would be clearly barred by limitation prescribed under the proviso to Section 77 (1-A)(b) of the Act inasmuch as the claim pertaining to the aforesaid period crystallized only on 17.04.2000 which is clearly inadmissible being barred by limitation. To overcome the bar of limitation, respondent deliberately chose to invoke Section 45A of the Act which is not available in

the facts and circumstances of the case. In this connection, appellant has placed reliance on the following decisions:

1. *Masco (Private) Ltd. Vs. Employees' State Insurance Corporation, Delhi*[1]*;*

2. *EID Parry (India) Ltd. Vs. Employees' State Insurance Corporation*[2];

3. *Cosmopolitan Club, Chennai Vs. Deputy Director*[3]*;*

4. *Srikantam Talkies Vs. Employees' State Insurance Corporation*[4];

5. *ESI Corpn. Vs. C.C. Santhakumar*[5]*;*

6. *India Pistons Ltd. Vs. Deputy Director*[6]

11.10. Summing up his arguments, learned counsel for the appellant submits that the impugned judgment and order cannot be sustained inasmuch as the High Court overlooked the fact that the respondent had passed the order dated 17.04.2000 without jurisdiction. Impugned orders of the High Court, Employees Insurance Court and that of the corporation are thus liable to be set

[1] 1975 (II) LLJ 29
[2] 2002 (3) LLN 164
[3] 2006 (2) LLN 878
[4] 2006 SCC OnLine AP 769
[5] (2007) 1 SCC 584
[6] 2010 SCC OnLine Mad 6510

aside and quashed. Consequently, the appeal should be allowed.

12. *Per contra,* learned counsel for the respondent submits that the Act is a welfare and beneficial piece of social security legislation, intended to provide benefits to the employees in cases of sickness, maternity and employment injury. Therefore, provisions of the Act must receive a liberal and purposive construction to advance its beneficient objective. In this connection, reliance is placed on a decision of this Court in *Bangalore Turf Club Limited Vs. Employees' State Insurance Corporation*[7].

12.1. He submits that the present case arose out of a detailed inspection of the appellant's establishment at Thiruvottiyur conducted by the Inspectors of the respondent on multiple occasions from 12.08.1991 to 08.07.1992. During such inspections, significant omissions in the recording of wages by the appellant were found. Those were immediately brought to the notice of the appellant pointing out instances where amounts paid as wages were clubbed with non-wage expenditure under

[7] (2014) 9 SCC 657

various accounting heads, such as, repairs and maintenance, extraordinary revenue and general services.

12.2. According to learned counsel for the respondent, despite repeated directions to segregate the wage component of employees from other expense heads, appellant failed to produce the complete and proper record, vouchers or supporting bills that would have enabled the corporation to identify the precise wage component reliable for contribution. As many as fifteen opportunities were granted to the appellant yet there was no compliance. In such circumstances, respondent was left with no other option but to invoke Section 45-A of the Act and determine the contribution required to be paid by the employer i.e. the appellant on the basis of the information available.

12.3. Appellant had failed to produce supporting documents making it impossible to segregate wage related expenses. Therefore, the determination made by the authorized officer on 17.04.2000 was in strict conformity with Section 45A of the Act.

12.4. Learned counsel further points out that the Employees Insurance Court had specifically recorded a finding that the appellant had not produced any supporting bills or vouchers to substantiate its claim. The Employees Insurance Court had noted that the witness produced by the appellant had admitted in cross-examination that no such documents were produced and that there was no evidence to show that those were produced even before the authority during the personal hearings. Hence, the contention of the corporation that relevant records were not furnished stood established before both the fora.

12.5. Learned counsel submits that Section 45-A can be invoked not only in cases of complete absence of records but also when the employer fails to maintain accurate or adequate particulars or obstructs the inspection process. Learned counsel has referred to Section 44 of the Act which mandates every employer to furnish returns and maintain registers and records as may be prescribed. Section 45 empowers Inspectors to verify the correctness of such returns and to call for any

necessary information. Where such officers are prevented, either by non-production or partial production of records, the corporation is entitled under Section 45-A to make a best judgment determination.

12.6. With respect to limitation, it is submitted that Section 77(1A)(b) applies only to claims filed by the corporation before the Employees Insurance Court and not to determination made under Section 45A. In so far Section 45A is concerned, there is no limitation prescribed for the corporation to determine contributions. In this connection, reliance is placed on *Santhakumar.*

12.7. Learned counsel submits that non-production of record by an employer is a continuing default and that the liability to pay contribution continues until payment is made. The limitation prescribed under Section 77(1A)(b) is, therefore, wholly irrelevant to proceedings under Section 45A. In the circumstances, learned counsel for the respondent prays for dismissal of the appeal.

13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. There is no doubt that the Employees' State Insurance Act, 1948 (already referred to as 'the Act' hereinabove) is a beneficial piece of legislation. It has been enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

14.1. Section 38 of the Act mandates that all employees in factories or establishments to which the Act applies shall be insured in the manner provided by the Act. Section 39 deals with contributions. As per sub-section (1), the contribution payable under the Act in respect of an employee shall comprise contribution payable by the employer i.e. the employer's contribution, and contribution payable by the employee i.e. the employee's contribution, and shall be paid to the corporation. As per sub-section (2), the contribution shall be paid at such rates as may be prescribed by the Central Government and in terms of sub-section (3), the wage

period in relation to an employee shall be the unit in respect of which all contributions shall be payable under the Act. Sub-section (4) provides that contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. Consequences of non-payment or late payment of contributions are provided for in sub-section (5). Clause (a) of sub-section (5) says that if any contribution payable under the 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. The proviso, however, clarifies that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank. Clause (b) says that any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under Section 45C to Section 45I of the Act.

14.2. Section 44 is relevant. It deals with the requirement of employers to furnish returns and maintain registers in certain cases. Section 44 reads thus:

> **44. Employers to furnish returns and maintain registers in certain cases**.—(1) Every principal and immediate employer shall submit to the corporation or to such officer of the corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.
>
> (2) Where in respect of any factory or establishment the corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.
>
> (3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.

14.3. From an analysis of Section 44, it is seen that every employer is under a mandate to submit to the corporation returns in the prescribed form containing such particulars relating to persons employed by him in his factory or establishment. If the corporation has reasons to believe that such a return has not been submitted, it may call upon the employer to furnish such particulars as may be considered necessary for the purpose of enabling the corporation to decide whether the factory or establishment is covered under the Act. Further, every employer is bound to maintain such registers or records in respect of his factory or establishment as may be required by the regulations framed in this regard.

14.4. Under Section 45, the corporation may appoint persons as Social Security Officers (prior to 01.06.2010, these officers were referred to as 'Inspectors') for the purpose of enquiring into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of the Act has been complied with. For

this purpose, such officers are empowered to enter into any office, establishment, factory or other premises of the employer and to require any person found in charge thereof to produce the relevant records or to furnish such information as may be considered necessary. Such officers also have the power to examine the principal or immediate employer, his agent or servant or any person found in such factory etc. with respect to any matter relevant to the purpose aforesaid. He also has the authority to make copies of or to take extracts from such record.

14.5. Section 45A provides for determination of contributions in certain cases. Section 45A as it stood at the relevant point of time reads thus:

> **45A. Determination of contributions in certain cases**.—(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the corporation referred to in sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under Section 45, the corporation may, on the basis

of information available to it, by order determine the amount of contributions payable in respect of the employees of that factory or establishment:

Provided that no such order shall be passed by the corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

(2) An order made by the corporation under sub-section (1) shall be sufficient proof of the claim of the corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B or the recovery under sections 45C to 45I.

14.6. From an analysis of the provisions contained in Section 45A, it is seen that the said provision would come into effect when no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44. It would also come into play if any Inspector or other official of the corporation is prevented in any manner by the principal or immediate employer or any other person exercising his functions or discharging his duties under Section 45. In such an eventuality, the corporation may, on the basis of information available to it, pass an order determining the

amount of contributions payable in respect of the employees of that factory or establishment. As per the proviso to sub-section (1), no such order shall be passed by the corporation without giving a reasonable opportunity of being heard to the employer.

14.7. In other words, there are two pre-conditions which must be satisfied before Section 45A can be invoked. Firstly, no returns, particulars, registers or records in respect of a factory or establishment are submitted, furnished or maintained in accordance with the provisions of Section 44. Secondly, any Inspector or other official of the corporation is prevented by the employer in exercising his functions or discharging his duties under Section 45.

14.8. While Section 45-B says that any contribution payable under the Act may be recovered as an arrear of land revenue, Sections 45-C to Section 45-I lays down the procedure for such recovery.

14.9. Chapter VI deals with adjudication of dispute and claims. Sections 74 to 83 form part of Chapter VI. Constitution of Employees Insurance Court is provided

for in Section 74. Section 75 mentions the matters which can be decided by an Employees Insurance Court. Section 75(1)(g) is relevant. It says that if any question or dispute arises as to any other matter which is in dispute between a principal employer and the corporation or between a principal employer and an immediate employer or between a person and the corporation or between an employee and a principal or immediate employer in respect of any contribution or benefit or other dues payable or recoverable under the Act or any other matter required to be or which may be decided by the Employees Insurance Court under the Act, such question or dispute shall be decided by the Employees Insurance Court in accordance with the provisions of the Act. Sub-section (2) is more specific. It says that claims, such as, claim for the recovery of contributions from the principal employer etc. shall be decided by the Employees Insurance Court. Both sub-sections (1) and (2) are subject to provisions of sub-section (2A) which deals with a situation where a question of disablement arises in a proceeding before the Employees Insurance Court. As per sub-section (3), no civil court shall have jurisdiction to decide or deal with

any question or dispute as aforesaid or to adjudicate on any liability which by or under the Act is to be decided by the Employees Insurance Court or by other fora like a medical board or by a medical appeal tribunal.

14.10. Section 77 deals with commencement of proceedings. As per sub-section (1), the proceedings before an Employees Insurance Court shall be commenced by application. Sub-section (1A)(b) including the proviso thereto is relevant and the same reads thus:

> (1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.
>
> *Explanation.*—For the purpose of this sub-section,—
>
> (a) * * * * *
>
> (b) the cause of action in respect of a claim by the corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the corporation for the first time:
>
> Provided that no claim shall be made by the corporation after five years of the period to which the claim relates;
>
> (c) * * * * *

14.11. Thus, Section 77(1A) provides for two periods of limitation. At the first instance, an application for initiation of proceedings by the employer before the Employees Insurance Court contesting or disputing a claim has a limitation period of three years from the date of the demand. However, the second instance of limitation is for the corporation. As per the proviso to sub-section (1A), no claim shall be made by the corporation after five years of the period to which the claim relates.

14.12. Section 78 clarifies that the Employees Insurance Court shall have all the powers of a civil court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents etc. and for recording of evidence. The Employees Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

14.13. Section 82 provides for appeal. As per sub-section (2), an appeal shall lie to the High Court from an order of an Employees Insurance Court if it involves a substantial question of law.

15. Having noted the relevant legal provisions, we may now deal with the judgments cited at the bar.

16. In *Bangalore Turf Club Limited*, this Court was considering the question as to whether a 'race club' would fall under the scope of the definition of the word 'shop' for the purposes of a notification issued under sub-section (1) of Section 5 of the Act. It was in that context that this Court examined the ambit of the Act and declared that it is a welfare legislation enacted by the Central Government as a consequence of the urgent need for a scheme of health insurance for workers. It is a beneficial legislation which seeks to provide social security for those workers which it encompasses. Taking into consideration the nature and purpose of the Act, it would be more preferable to adopt a liberal rule of interpretation to ensure that the benefits extend to those workers who need to be covered, based on the intention of the legislature. Applying the liberal rule of interpretation, this Court held that a Turf Club would fall within the meaning of the word 'shop' as mentioned in the notification issued

under the Act and, therefore, the provisions of the Act would extend to the Turf Club as well.

17. There can be no two views on the aforesaid proposition. Question is whether in the fact situation of the case, invocation of jurisdiction under Section 45A would be justified or not.

18. The scope and ambit of Section 45A of the Act came up for consideration before the Delhi High Court in *Masco (Private) Ltd.* In that case, appellant had challenged the demand raised by the corporation under Section 45A of the Act on the ground that the appellant had requested the corporation on a number of occasions to inspect the records of the appellant but officials of the corporation declined to inspect the relevant records. In the factual backdrop of that case, the question which came up for consideration before the Delhi High Court was whether, having regard to its true meaning and correct interpretation, the resort by the corporation to the provisions of Section 45A of the Act for the purpose of an adhoc determination of the special contribution and the employees contribution payable by the appellant was

justified? After analyzing the provisions of Section 45A, Delhi High Court observed that the materials on record did not justify the conclusion that the first condition was satisfied. Section 45A provides for an exception and deals with a situation in which none of the records provided in the various other provisions of the Act are available to the corporation and lays down an extraordinary procedure for the determination of contribution on the basis of material that may be available with the corporation in the absence of any returns, particulars, registers or records. Delhi High Court held that the first condition of Section 45A would be satisfied only if the employer neither submitted the returns nor furnished the particulars nor maintained registers or records required by law. It went on to declare that it would be equally difficult to hold that even after the returns, particulars, registers or records were submitted, furnished or maintained but did not conform strictly to the norms or were incorrect or incomplete or mere discrepant or otherwise unreliable, the first condition of Section 45A would still be attracted.

18.1. Explaining further, Delhi High Court held that application of Section 45A would depend on if either of the two conditions envisaged by it have been satisfied. The first condition relates to failure to submit, furnish or maintain returns, particulars, registers or records as required under Section 44 and the other relates to obstruction to any officer in exercising his functions or discharging his duties under Section 45 of the Act. The satisfaction of either of the conditions involves a question of fact. In one case, whether there has been any failure to submit, furnish or maintain the returns, particulars, registers or records and in the other where the employer caused any obstruction to the officers of the corporation. The two pre-conditions have been explained by the Delhi High Court as under:

> **33.** ..... While Section 44 obliges an employer to submit such returns as may be prescribed and where returns had not been filed, to furnish such particulars as the corporation may requisition and to maintain certain registers or records, Section 45 empowers the Inspector or any other officer specially authorized in that behalf to require an employer to furnish information, to enter any office or establishment, to produce records to examine

the employer or any employee, to make copies of or take extracts from the records and to exercise other powers as may be prescribed if such official considers that such a direction is necessary for the purpose of enquiring into the correctness of any of the particulars stated in any returns or for the purpose of ascertaining whether any provisions of the Act had been complied with. The two parts of sub-section (1) of Section 45A, therefore, operate in distinct spheres and do not overlap. It further appears that while mere failure to submit, furnish or maintain returns, particulars, registers or records may attract the application of sub-section (1) of Section 45-A of the Act, the other alternative condition requires that the Inspector or the other official must have been obstructed in exercising his functions or discharging his duties under Section 45 of the Act and if the intention of the Legislature by using the expression "obstructed" was to make the second condition applicable even if there was a mere failure to comply with the direction that may be made by the officer pursuant to his powers under sub-section (2) of Section 45 of the Act as distinct from causing a physical obstruction or placing a deliberate hurdle, there was nothing to prevent the Legislature from using in relation to the direction under Section 45 of the Act the same phraseology as was used in relation to the first condition. The only reasonable way to explain the distinguishable phraseology used in the two parts of sub-section (1) of S. 45A is to construe the

expression "obstructed" so as to confine it to cases of physical obstacle, use of force, or threatened use of force and as excluding a mere failure to comply with any direction.

19. The Andhra Pradesh High Court in *EID Parry (India) Ltd.* examined the provisions of Section 77 (1A) of the Act to consider as to whether the appellant was not liable to pay the contribution demanded. Adverting to the proviso to the Explanation to sub-section (1A) of Section 77 of the Act, Andhra Pradesh High Court held as under:

> **11.** .....By the proviso to Explanation to sub-section (1A) of Section 77 of the Act, incorporated in the Act by Act 29 of 1989, an embargo is placed on the corporation for making a claim after five years of the period to which the claim relates. The intention of the Parliament probably is to arrest the corporation reviving stale claims. As urged by the learned counsel for respondents it is no doubt true that Section 45B of the Act lays down that contribution payable can be recovered as arrears of land revenue. But that does not mean as contended by the learned counsel for respondent that respondent at anytime can enforce the claim without reference to limitation. The phrase: "Contribution payable under this Act" used in Section 45B of the Act means the "contribution as determined under Section 45-A" of the Act. Sub-section (2) of Section 45-A of the Act lays down that

order made under sub-section (1) is sufficient proof of the claim under Section 75 of the Act, which relates to the matters to be decided by the Employees' Insurance Court. Sub-section (1A) of Section 77 of the Act lays down that application before Employees' State Insurance Court (under Section 75 of the Act) has to be made within three years from the date on which the cause of action arose. Clause (b) to Explanation to sub-section (1A) of Section 77 of the Act says that cause of action would be deemed to have arisen on the day on which the claim was made by the corporation. So, it is clear that the person from whom the demand is made has to move the Employees' Insurance Court within three years from the date of demand. For what period such demand can be made by the corporation is laid down by the proviso to clause (b) of Explanation to sub-section (1A) of Section 77 of the Act.

19.1. Thereafter, the High Court concluded as under:

> **11.** .....Therefore, it is clear that the corporation can make a claim in respect of arrears due only for a period of five years prior to the date of demand, and those arrears only can be recovered as amounts of land revenue under Section 45-B of the Act.

19.2. In the facts of that case, it was held that claim for contribution from the appellant was unsustainable, and, was accordingly, set aside.

20. The question as to whether the proviso to Section 77(1A)(b) of the Act providing limitation of five years for claiming contribution, debar the corporation from recovering the contribution arrears as arrears of land revenue under Section 45B in pursuance of the order under Section 45A of the Act confronted the Madras High Court in *Cosmopolitan Club*. The High Court observed that from a reading of Chapter IV of the Act which includes Sections 45A and 45B, it is clear that there is no limitation prescribed. The purpose of introduction of these sections is to curb default by the employers by providing for an efficient method of recovery but where the records are produced, the assessment has to be made under Section 75(2) of the Act. Only when there is a failure in production of records or when there is no cooperation, the corporation can determine the amount due under Section 45A and recover the same as arrears of land revenue under Section 45B. But if the

records are produced and if there is cooperation, the assessment has to be made under Section 75(2)(a) It was held thus:

> **28.** Section 45A of the Employees State Insurance Act would provide for determination of contributions in certain cases. A reading of the above section would reveal that when the records are not produced by the establishment to the corporation and when there is no cooperation, the corporation has got the power to make assessment and determine the amount under Section 45A and recover the said amount as arrears of land revenue under Section 45B of the Act. When the corporation passed an order under Section 45A, the said order is final as far as the corporation is concerned. Under Section 45A(1), the corporation, by an order, can determine the amount of contributions payable in respect of the employees indulged in preventing the corporation from exercising its functions or discharging its duties under Section 45, on the basis of the material available to it, after giving reasonable opportunity. But, where the records are produced, the assessment has to be made under Section 75(2)(a) of the Act. Section 45A(2) would provide that the order under Section 45A(1) shall be used as sufficient proof of the claim of the corporation under Section 75 or for recovery of the amount determined by such order as arrears of land revenue under Section 45B. In other words, when there is a failure in production of records and

when there is no co-operation, the corporation can determine the amount and recover the same as arrears of land revenue under Section 45B. But, on the other hand, if the records are produced and if there is cooperation, the assessment has to be made and it can be used as a sufficient proof of the claim of the corporation under Section 75 before the E.S.I. Court. So, the limitation of three years for filing an application before the Court, introduced by Act 44 of 1966, would relate only to the application under Section 75 read with 77(1A). The order under Section 45A need not be executed by the corporation before the E.S.I. Court under Section 77. As such, the amendment to Section 77(1A)(b) proviso by Act 29 of 1989 providing five year limitation has no impact on the orders passed by the corporation under Section 45A.

20.1. Section 45A contemplates a summary method to determine contribution in case of deliberate default on the part of the employer or there is no co-operation by the employer. There is no doubt that the area and the field covered by Section 45A and Section 75 are quite different. Section 45A is a special provision for expeditious action against an employer who commits default. This special provision has been enacted only in order to weed out unscrupulous employers committing default in the

maintenance of the records and submission of correct returns for payment of contributions. If the period of limitation prescribed under the proviso to Clause (b) of Section 77(1A) is read into provisions of Section 45A, it would defeat the very purpose of Sections 45A and 45B. The prescription of limitation under Section 77(1A)(b) of the Act is deliberately not made applicable to the adjudication proceedings under Section 45A by the legislature since such a restriction would restrict the right of the corporation to determine the claims under Section 45A and the right of recovery under Section 45B. Thus, Section 45A does not prescribe any period of limitation. Finally, Madras High Court declared as under:

> Having regard to the scheme and object of the Act, while interpreting the provisions so as to advance the remedy and not to defeat and also in keeping with the principles enunciated in the decisions rendered by the Supreme Court, we are of the considered opinion, that the period of limitation, prescribed under Section 77(1A)(b) of the Employees' State Insurance Act, 1948, would not apply to the recovery proceedings under S.45B of the Act, in pursuance of an order under Section 45A.

21. In *C.C. Santhakumar*, this Court examined the contours of Sections 45A, 45B, 75 and 77 of the Act and on a combined reading of the aforesaid provisions, it is observed that no claim shall be made by the corporation beyond five years to which the claim relates as per the proviso to clause (b) of Section 77(1A). On the other hand, a reading of Chapter IV as a whole makes it clear that there is no limitation prescribed. Explaining the difference between Section 45A and Section 77(1A), this Court held as under:

> **15.** Section 45A provides for determination of contributions in certain cases. When the records are not produced by the establishment before the corporation and when there is no co-operation, the corporation has got the power to make assessment and determine the amount under Section 45A and recover the said amount as arrears of land revenue under Section 45B of the Act. This is in the nature of a best-judgment assessment as is known in taxing statutes. When the corporation passes an order under Section 45A, the said order is final as far as the corporation is concerned. Under Section 45A(1), the corporation, by an order, can determine the amount of contributions payable in respect of the employees where the employer prevents the corporation from exercising its functions or discharging its duties under Section 45, on the

basis of the material available to it, after giving reasonable opportunity. But, where the records are produced, the assessment has to be made under Section 75(2)(*a*) of the Act. Section 45A(2) provides that the order under Section 45A(1) shall be used as sufficient proof of the claim of the corporation under Section 75 or for recovery of the amount determined by such order as arrears of land revenue under Section 45B. In other words, when there is a failure in production of records and when there is no cooperation, the corporation can determine the amount and recover the same as arrears of land revenue under Section 45B. But, on the other hand, if the records are produced and if there is cooperation, the assessment has to be made and it can be used as a sufficient proof of the claim of the corporation under Section 75 before the ESI Court. So, the limitation of three years for filing an application before the court, introduced by Act 44 of 1966, can only relate to the application under Section 75 read with Section 77(1A). The order under Section 45A need not be executed by the corporation before the ESI Court under Section 77. As such, the amendment to Section 77(1A)(*b*) proviso by Act 29 of 1989 providing five-year limitation has no relevance so far as orders passed by the corporation under Section 45A are concerned.

22. Thus as noticed supra, Sections 45A and 45B on the one hand and Sections 75 and 77 on the other

hand operate in different fields. There cannot be any doubt that the area and the scope and ambit of Sections 45A and 75 are quite different. We have already discussed about the pre-conditions which are required to be satisfied before the jurisdiction under Section 45A can be invoked. Subject to fulfillment of the above pre-conditions, an order passed under Section 45A is final. It need not be executed by the corporation by filing an application under Section 77 before the Employees Insurance Court. Section 45A therefore does not prescribe any period of limitation and the limitation prescribed under Section 77 does not get attracted. As noticed supra, there is a reason for this. A defaulting employer or an obstructionist employer should not be allowed to avoid contributions required to be paid by them. However, where an order is passed under Section 45-A, it is for the employer to approach the Employees Insurance Court if he wants to challenge the same. In such an eventuality, the limitation prescribed is three years. On the other hand, ordinarily if the corporation disputes any contribution of the employer, it has to take recourse to Section 75 in which event, it has to move the

Employees Insurance Court for recovery of the amounts due. For that, corporation has to invoke Section 77 for initiation of proceedings before the Employees Insurance Court. However, to ensure that stale claims are not agitated, legislature has prescribed a limitation of five years for raising of such claims or disputes by the corporation. The limitation for institution of claims by the corporation before the Employees Insurance Court, as noticed supra, is prescribed under the proviso to Section 77(1A)(b) which mandates that no claim shall be made by the corporation after five years of the period to which the claim relates.

23. As explained in *Santhakumar* the limitation prescribed in the proviso to Section 77(1A)(b) applies only to claims made by the corporation before the Employees' Insurance Court and not to proceedings undertaken under Section 45A. It has been explained that if the five-year bar is read into Section 45A, it would defeat the very purpose for which Sections 45A and 45B were enacted, since such a restriction would curtail the corporation's authority to make a best-judgment determination in

cases of non-production of records or obstruction to inspection and would undeservedly benefit employers who evade statutory obligations.

24. Thus, Section 45A is designed as a mechanism which the corporation may employ only when there is a default *qua* Section 44 or when statutory inspection under Section 45 becomes impossible on account of the conduct of the employer. The foundation for exercise of the power under Section 45A, as explained in *Santhakumar*, is either non-production of records or absence of cooperation or obstruction of inspection. The power is conceived as a best judgment determination akin to similar provisions in taxing statutes. What is equally significant is the clear statement of law that when records are produced and cooperation is forthcoming, assessment must be carried out under Section 75(2)(a) and not under Section 45A. The distinction drawn is therefore fundamental to the statutory architecture. Section 45 A is not meant to be an alternative mode of computation at the option of the corporation. It is a residuary power available only when the employer makes

a default under Section 44 or disables the corporation from carrying out inspection under Section 45.

25. In so far the impugned judgment and order of the High Court is concerned, we find that the High Court itself recorded that the appellant had appeared before the corporation through its authorized representative(s) and that relevant records were produced during the course of personal hearings. If the records were produced and the appellant had participated in the personal hearings which indicates that there was no non co-operation or obstruction, the conditions precedent for invoking jurisdiction under Section 45A were clearly absent. While it is true that there is no limitation under Section 45A of the Act, it is equally true that invocation of the said provision is dependent upon fulfillment of the aforesaid two conditions which are the functional requirement for invoking Section 45A viz non-production of records or obstruction of inspection. Mere inadequacy of the record would not confer jurisdiction upon the corporation to invoke Section 45A. The legislative intent is clear: summary determination under Section 45A would be

permissible only in exceptional situations as alluded to hereinabove. The Act does not contemplate Section 45A as an alternative assessment mechanism available at the option of the corporation whenever the employer's records are perceived as deficient or inadequate.

26. Once *Santhakumar* is read and understood in its factual setting, its ratio becomes clear. In that case, the employer had failed to produce records and had not cooperated with the inspection. Invocation of Section 45A, therefore, rested squarely on the statutory pre-conditions. It would not be appropriate to extend the rationale of *Santhakumar* to cases where records have in fact been produced and where repeated personal hearings have been attended by the employer. Dissatisfaction with the completeness or quality of documents does not convert production into non-production, nor does it permit the corporation to invoke a power meant for exceptional situations. If the corporation, after examining the materials produced, believes that the computation made by the employer is incorrect or that further evidence is needed to decide the true nature of particular entries,

the proper course is to raise a dispute under Section 75. To enlarge Section 45A so as to cover situations of partial dissatisfaction or perceived inadequacy would tantamount to rewriting the statute in a manner plainly contrary to its text and structure.

27. In the present case, the materials placed before us shows that the appellant had produced ledgers, cash books, journal vouchers, contractor records and returns of contribution for the period in question. Personal hearings were granted on numerous dates and the appellant had appeared through its authorised representative in such hearings. The corporation has itself recorded in its order that records were produced but certain supporting bills were not furnished in respect of some heads of expenditure. This finding, even if accepted at face value, does not bring the case within the ambit of Section 45A. The statutory threshold is not inadequate production but non-production. The statute does not permit a best judgment determination merely because the record produced is inadequate.

28. It is not in dispute that the demand in this case pertains to the period from August 1988 to March 1992. Show cause notice was issued on 27.11.1996 and the final order under Section 45A was passed on 17.04.2000. Appellant was consistent in contending both before the Employees Insurance Court as well as before the High Court that the exercise undertaken by the respondent was beyond the statutory period of limitation and that the respondent sought to overcome the bar under Section 77(1A)(b) by resorting to Section 45A notwithstanding the fact that records were duly produced and that there was cooperation to inspection by the employer i.e. by the appellant.

29. The Employees Insurance Court and the High Court, in our view, did not advert to this essential jurisdictional requirement. Both courts accepted that records were produced, that the appellant participated in personal hearings and that the basic books of account were available. Yet, by treating the matter purely as one of limitation, the courts overlooked the statutory pre-conditions embedded in Section 45A. The reasoning

suffers from the omission to examine whether invocation of Section 45A was permissible at all in the background of admitted production of records and cooperation. The statutory scheme does not allow the corporation to bypass Section 75 merely because it finds verification inconvenient or time consuming.

30. In so far the instant case is concerned, it is clear that the respondent was not obstructed from inspection; nor was there non-production of records. The appellant furnished ledgers, cash books, vouchers and returns, and had attended personal hearings repeatedly. The respondent's allegation was not non-production of the record but inadequacy of the record. In such a case, the proper statutory course for the respondent, once records had been produced, was to examine the correctness thereof under Section 75 and if any dispute persisted, to initiate proceedings within the period of limitation prescribed by the proviso to Section 77(1A)(b). Invocation of Section 45A in such circumstances was misconceived. The Employees' Insurance Court and the High Court, in our considered opinion, while affirming the

order passed under Section 45A without examining this jurisdictional deficiency, fell into a grave and palpable error.

31. This being the position, we have no hesitation in holding that invocation of power under Section 45A of the Act by the respondent was unsustainable in the facts and circumstances of the case rendering the order passed thereunder by the corporation on 17.04.2000 wholly untenable. Accordingly, the said order dated 17.04.2000 is set aside. Resultantly, the order passed by the Employees Insurance Court dated 06.07.2015 and the impugned judgment and order of the High Court dated 12.10.2023 are also set aside.

32. Consequently, the appeal is allowed. However, there shall be no order as to cost.

.....J.
[MANOJ MISRA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
DECEMBER 18, 2025.