

**Resumed on S.A.****Further Cross examination by Adv. Miss. S. V. Thorat for Opponents.**

34. Now I am shown para 33 of my cross examination dtd. 02.08.2024 in accordance with my statement made on 2.8.2024. I have verified the official record available with me. It is correct to say that additional place of business mentioned in column no. 5 as per document 27/2 exists with effect from 13.2.2009. I have also verified official record about certificate of registration of applicant firm. It is correct to say that certificate of registration value added tax was issued on 1.4.2006. Now I am shown document Exh. 27/2. It is correct to say that on 13.2.2009 provisions of ESI Act were not applicable at the address, inserted with that date, as mentioned in said certificate. I am not aware whether before closing a unit and shifting it to another place, permission under Factories Act or Shops and Establishments Act is required or not. I cannot tell whether any other document other than the certificate of registration under the Maharashtra Value Added Tax Act, was submitted to the opponents at Pune or Kolhapur office demonstrating change of address from Kolhapur to Vathar. I cannot tell whether after submission of such documents opponents could

have conducted closure inspection of the applicant.

35. I am not aware whether manual submission of challan system was implemented upto 2010 or thereafter. Such challans can be submitted through online mode. Witness submitted that challans are submitted through online mode only. It is correct to say that as I am working in Accounts department, the work of submitting challans to ESI is done through said department only. Since my joining the applicant in June 2014 challans are submitted through online mode only. It is correct to say that earlier ESI Code number was in 3 or 4 digits and after implementation of remittance through online method, such code is in 17 digits.

36. Now I am shown document Exh.26/5. It is correct to say that in letter dtd. 24.4.1991 code number of applicant is mentioned as 33786190. Now I am shown document Exh.27(A/1). It is correct to say that the code number is mentioned as 33000078610000910. It is correct to say that the unique code number of applicant is 7861 as per this communication. It is correct to say that as per allotted code number 7861 the applicant

remitted the contribution. I am not aware whether upon shifting unit the concerned employees are to be shown as exited and monthly contribution return is to be filed as nil or not.

37. I am not aware whether such employees are to be re-registered by obtaining sub code. It is correct to say that applicant has neither applied nor obtained any sub code for new address. It is not correct to say that at the additional address mentioned in para 2 of my affidavit as workshop was started with effect from 13.2.2009.

38. It is correct to say that exact date from which entry of commercial vehicle was restricted during day time in Kolhapur city by Traffic Police as well as Municipal Authorities is not mentioned. It is correct to say that no document in this regard is produced on record. Now I am shown para 4 of my affidavit. It is correct to say that no document is filed to demonstrate that in the year 2016 manufacture of "Eicher" instructed the applicant to shift their entire commercial office and related staff employed at registered office.

39. I cannot recall notification dtd. 26.7.2016 and I can make a statement after verification thereof. I have not verified the

documents filed on record by the applicant. It is not correct to say that the statements made by me in my affidavit from para 1 to 24 are false or incorrect. I have gone through the notification dtd. 6.10.2016 as mentioned in para 9 of my affidavit. It is not correct to say that the applicant cannot take advantage of notification dtd. 6.10.206 or is liable to remit contribution @6.5%. Now I am shown para 10 of my affidavit. It is correct to say that no document is filed to show that applicant approached the local branch of corporation for official advice. It is correct to say that no document is filed to show that upon advice and communication of corporation applicant started remitting contribution at reduced rate @4%. It is not correct to say that I have stated false to that effect in my affidavit. It is not correct to say that Applicant has not paid any excess amount of contribution as mentioned in para 12 of my affidavit. It is not correct to say that opponents are not liable to refund Rs.76221/- to the applicant towards excess contribution.

40. It is correct to say that the applicant received communication dtd. 1.1.2020 and notice C-19 was dtd. 20.8.2020 and therefore there is a time gap of 7 months. Witness submits that

at the relevant time, the Covid 19 pandemic was ongoing. Now I am shown para 19 of my affidavit. I am not aware that personal hearing needs to be provided only in case notice C-18 is issued on ad-hoc basis or the same was not given to the applicant for the reason that such notice was issued on actual basis. It is not correct to say that communication C-18, C-19, CP-2 or prohibitory order are valid and proper. It is not correct to say that applicant is liable to pay contribution or interest as claimed by opponents accordingly. It is not correct to say that applicant cannot take benefit of notification dtd. 6.10.2016 for the reason that it is located at the old address within Municipal Corporation area. It is not correct to say that I am stating false on oath just to support the applicant. It is not correct to say that contents of my affidavit are false.

No re-exam. Witness is discharged.

R.O.A.C.

Kolhapur.

Date :- 13.09.2024

( S. S. Khandekar)  
Member,  
Industrial Court No. 1, Kolhapur.