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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 13.11.2025***
Judgment pronounced on: 28.11.2025

+ **FAO 62/2018 & CM APPLs. 5963/2018, 5965/2018, 33919/2019**

MOTOR & GENERAL FINANCE LIMITEDAppellant

Through: **Mr. J.P. Sengh, Sr. Advocate**
alongwith Mr. Sunil Magon,
Advocate

Versus

DIRECTOR GENERAL & ANRRespondents

Through: **Mr. K.P. Mavi, Advocate alongwith**
Mr. Arvind Kumar Bansal, Advocate

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Section 82(2) of the Employees' State Insurance Act, 1948 (the ESI Act), has been filed by the petitioner in ESI No. 72/16/05 on the file of SCJ-cum-RC, Central District, Tis Hazar Courts, Delhi, challenging the judgment dated 16.01.2017 whereby his petition filed under Section 75 of the ESI Act has been dismissed. The parties in this appeal will be referred



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to as described in the original proceedings.

2. Brief facts of the case are as follows:- The petitioner is a Public Limited Company incorporated under the Companies Act, 1913, which carried out the business of hire purchase between 02.10.1998 and 30.04.1989. A show cause notice dated 19.09.1989 was issued to the petitioner by the office of the respondents to deposit an amount of ₹51,567 towards ESI Contribution for the period between 02.10.1998 and 30.04.1989. The petitioner replied on 22.09.1989, stating that the Company was not covered under the ESI Act. The respondents passed an Order dated 07.07.1993, wherein it upheld the contribution demand. The said order was challenged by the petitioner before this Court by way of Writ Petition No. 4110/1993, which was disposed of *vide* order dated 21.07.2005, by directing the petitioner to adopt an efficacious remedy under the ESI Act.

2.1. Pursuant to the Court's direction, an application under



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Section 75 of the ESI Act was filed by the petitioner before the EIC concerned. *Vide* Order dated 30.07.2011, the EIC directed the respondents/ESIC to consider afresh the applicability of the ESI Act on the petitioner. The documents sought by the respondents/ESIC *vide* letter dated 13.09.2011 were provided. However, the respondents/ESIC passed an order dated 28.12.2011 again holding the petitioner to be covered under the ESI Act without properly appreciating their contentions. It was further alleged that on the advice of respondents' officials, the petitioner deposited a one-time amount of ₹1,62,846/- under the *bona fide* belief that the matter was finally settled.

2.2. Respondent No. 1/ESIC thereafter issued fresh notices dated 13.08.2012 alleging non-compliance and making an ad hoc assessment of ₹74,75,606/- towards ESI contributions for the period from 01.05.1989 to 31.05.2012. The petitioner moved the Employees Insurance Court (the EIC) for revival of its earlier



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application. The revival was allowed on 28.01.2013.

2.3. On completion of pleadings, necessary issues were framed. The parties went to trial on the basis of the aforesaid pleadings. PW1 to PW3 were examined, and Exhibits A to C (colly) were marked on the side of the petitioner. On behalf of the respondents/ESIC, RW1 to RW3 were examined and exhibits RW/1 to RW/4 were marked. On a consideration of oral and documentary evidence and after hearing both sides, *vide* the impugned Judgment, the EIC dismissed the petition, upholding the Order dated 13.08.2012 passed by the ESIC for ₹74,75,000/-. Aggrieved, the petitioner has come up in appeal.

3. The learned counsel for the petitioner submitted that the petitioner, being a non-banking finance Company registered under the RBI Act, 1934, was neither a shop nor involved in trading activities. The notifications issued under the ESI Act are applicable only to shops. At the relevant time, all the employees of the



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petitioner were drawing wages more than ₹1600/- per month and hence, fell under the category of exempted employees as provided under Section 2(10) of the ESI Act. Further, a superior medi-claim facility existed for all the employees, which far exceeded the benefits under the ESI scheme.

3.1. It was also submitted on behalf of the petitioner that after revival of the matter before the EIC, both parties led evidence, and the matter was posted to 25.09.2017 for final arguments. On that date, there was a change of Presiding Officer. The new officer, without hearing the final arguments or affording any opportunity of oral submissions, reserved the matter for judgment and passed the impugned judgment dated 16.10.2017, in violation of the principles of natural justice.

3.2. It was further submitted that the rejection of salary statements for non-compliance of Section 65B(4) of the Indian Evidence Act, 1872, is wholly erroneous. The documents produced



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were photocopies of original statements already furnished to the ESIC during the inquiry, where authenticity was not disputed, and therefore, the presumption that the computer entries might be incorrect is without any basis.

4. *Per Contra*, the learned counsel for the respondent/ESIC submitted that although the appeal has been filed under Section 82 of the ESI Act, no substantial question of law is involved in the present case, and that only pure question of facts have been raised. The demand for contribution was made by the respondents/ESIC only after a survey was conducted and the necessary records inspected. It was also submitted that the petitioner has not filed any balance sheet to show the profit and loss account.

5. Heard both sides.

6. The petitioner first contends that there has been a violation of the principles of natural justice, because the EIC, without hearing the petitioner, has passed the impugned judgment.



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However, the record reflects that both parties were heard. There is no reason to disbelieve what has been recorded in the impugned judgment on this aspect, and hence, the argument of violation of the principles of natural justice cannot be sustained.

7. The next plea relates to the nature of the petitioner's establishment. It was asserted that, being a non-banking financial Company engaged in hire-purchase and financing activities, it is not a "shop" or "factory" as contemplated under Section 2(12) of the ESI Act, and therefore not covered under the provisions of the said Act. Though such a contention was taken, the petitioner failed to produce any sort of evidence, including its Memorandum or Articles of Association, activity statements, or any evidence to demonstrate that its primary business was outside the purview of the Act. Hence, the EIC rightly concluded that the petitioner does come within the purview of ESI Act.

8. The petitioner further relied on the wage ceiling applicable



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during the period 1988-1989 and claimed that all its employees were drawing more than ₹1600 per month. The burden to prove this exclusion lay squarely on the petitioner. However, it produced only photocopies of salary statements and computer-generated sheets unsupported by primary records, without appointment letters, ledger entries, audited accounts, or a certificate under Section 65B of the Evidence Act. The documents were attempted to be proved through the testimony of PW2. However, on going through the testimony of PW2, it appears that he does not have much knowledge of the said documents. Hence, his testimony is not sufficient to prove the same. And so the documents were rightly rejected as inadmissible or unreliable.

9. It was further submitted that Annexure A-7 inspection report will clearly show that the relevant records were not perused before ESIC arrived at the conclusion that the petitioner is covered by the ESI Act. The said report shows that the Inspector merely



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perused the attendance register. Hence, the argument is that, the mere fact that the petitioner has about 116 employees will not automatically bring it under the provisions of the ESI Act unless the employees also fall within the wage bracket of not more than ₹1600.

10. According to the petitioner, all its employees were drawing a minimum salary of ₹2273. Though such a contention was taken, the same has not been substantiated or proved. Therefore, there is no infirmity committed by the EIC on the said aspect also.

11. The scope of an appeal under Section 82(2) is confined to substantial questions of law. The findings recorded by the EIC regarding the nature of the establishment, wage records, admissibility of documents, and credibility of witnesses are pure findings of fact. The petitioner has failed to point out any perversity or misapplication of legal principles warranting



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interference under this limited appellate jurisdiction.

12. In view of the aforesaid discussion, the appeal is dismissed. The judgment dated 16.10.2017 of the EIC is affirmed. The assessment and demand raised by the ESIC stands confirmed. The appellant/petitioner shall deposit the statutory dues within eight weeks, failing which the respondents/ESIC shall be free to initiate recovery proceedings in accordance with law.

13. Application(s), pending if any, shall stand closed. No order as to costs.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 28, 2025