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M/S GOODYEAR INDIA LTD.

v.

THE REGIONAL DIRECTOR, EMPLOYEES' STATE
INSURANCE CORPN. AND ORS.

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NOVEMBER 27, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Employees State Insurance Act, 1948 : Sections 45-B, 77(1-A) Explanation (C) and 77-A.

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Employees State Insurance (General) Regulation, 1950 : Regulation 26.

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Employees State Insurance Fund—Demand for contribution—Limitation period for—Demand made on 1st December, 1982 from appellant Company for contribution towards Fund—Demand pertaining to period from 28.1.68 to 30.10.79 in respect of establishment at Bangalore and from 28.1.1968 to 31.8.1979 for establishment at Indore—Appellant's contention that demands are barred by limitation—Held, The cause of action for contribution would arise only after the decision by the Insurance Court in the proceedings is laid under Section 75 of the Act—The Act was subsequently amended by Section 30 of the Amendment Act 28 of 1989 which came into effect from October 20, 1989—It provides that application can be made within three years from the date of arising of the cause of action—This amendment has no application to the proceedings in this case since the cause of action had arisen prior to the amendment—Under these circumstances, there is no bar of limitation for the payment of the contribution as contended.

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Kirloskar Brothers Ltd. v. Employees State Insurance Corporation, [1966] 2 SCC 682, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1152 of 1985.

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From the Judgment and Order dated 30.1.85 of the Punjab & Haryana High Court in F.A. O.No. 21 of 1985.

Krishan Mahajan, Amit Dhingra and P.H. Parekh for the Appellants.

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T.C. Sharma for Mrs. Anil Katiyar for the Respondents.

The following Order of the Court was delivered :

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This appeal by special leave arises from the judgment of the Punjab and Haryana High Court, made on January 30, 1985 in FAO No. 21/85 and C.M. No. 192-CII.

The appellant-establishment was covered under the provisions of the Employees' State Insurance Act, 1943 (for short, the 'Act'). On December 1, 1982, a demand was made of the appellant to contribute the amount under the Act to the fund of the Corporation for the period from 28.1.1968 to 31.10.1979 for the establishment at Bangalore and from 28.1.1968 to 31.8.1979 for the establishment at Indore. Initially, a contention had been raised by the appellant that these establishments are not covered under the Act and there is no relationship of employer and employee between the workmen and the appellant. This controversy was covered by a three Judge Bench decision of this Court in *Kirloskar Brothers Ltd. v. Employees State Insurance Corporation* [1966] 2 SCC 682; wherein this Court had held that the appellant is covered by the provisions of the Act and is liable to contribute the amount to the Fund of the Corporation to ensure insurance coverage of the employees working under the appellant. In this appeal, the controversy is as to the limitation and the period from which they are liable to make the contribution.

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The appellants placing reliance on Section 77-A of the Act read with Regulation 26 of the Employees' State Insurance (General) Regulation 1950, as was in operation at the relevant time, contended that the demands are barred by limitation and, therefore, the appellants are not liable to make any contribution for the period in question. With a view to appreciate the contention, it is necessary to look to the provisions of the Act.

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Section 45-B provides for the procedure for recovery of contributions which says that any contribution payable under this Act may be recovered as an arrears of land revenue. Section 75(2) provides that :

"the claim shall be decided by the Employees' Insurance Court (subject to the provisions of sub-Section 2-A), namely:

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"(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from

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- A any immediate employer;
- (c) omitted
- (d) claim against a principal employer under Section 68;
- B (e) claim under Section 70 for the recovery of the value of amount of the benefits received by a person when he is not lawfully entitled thereto; and
- (f) any claim for the recovery of any benefit admissible under this Act."

C Section 77 provides for that "commencement of proceedings". Sub-section (1) provides that the proceedings before an Employees' Insurance Court shall be commenced by application.

D Section 77(1-A) provides for the limitation and envisaged that "Every such application shall be made within a period of three years from the date on which the cause of action arose."

E Explanation (c) to Section 77(1-A) provides that "cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations."

Regulations 26(2) provides for the limitation for payment and reads thus:

F "For purposes of Section 77 of the Act the due date by which the evidence of contributions having been paid must reach the Corporation shall be last of the days respectively specified in clauses (a), (b), (c) and (d) of sub-regulation (1).

G Clause (a) to (d) of sub-regulation (1) read as under :

"(a) within 7 days of the date on which he comes to know of the death of such person;

H (b) within 7 days of the date of receipt of a requisition in that behalf from the appropriate office;

(c) within 42 days of the termination of the contribution period to which it relates; A

(d) within 28 days of the date of permanent closure of the factory."

It would thus be seen that the cause of action for contribution would arise only after the decision by the Insurance Court in the proceedings is laid under Section 75 of the Act. Until then, the cause of action cannot be said to have arisen. In other words, there is no bar of limitation. It is seen that the Act was subsequently amended by Section 30 of the Amendment Act 28 of 1989 which came into effect with effect from October 20, 1989. It provides application can be made within three years from the date of arising of the cause of action. This amendment has no application to the proceedings in this case since the cause of action had arisen prior to the amendment. Under these circumstances, there is no bar of limitation for the payment of the contribution as contended. B C

The appeal is accordingly dismissed but, in the circumstances, without costs. We are informed that the amount has already been deposited. If so, no further action is needed. D

T.N.A.

Appeal dismissed.