



EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN : CIG ROAD : NEW DELHI
Tel: 23236764

NO.T-11/13/3/2008-Rev.II

December 31, 2008

To

All the Regional Directors/Jt. Director (I/c)
ESI Corporation
Regional/Sub-Regional Office

Subject: Re-opening of Cases where contribution has been determined under Section 45-A of the ESI Act.

Sir,

I am directed to draw your attention to the instructions issued by this office vide No.T-11/13/7/90-Ins.III dated 14.1.91, No.T-11/13/3/95-Ins.III dated 4.6.96, T-11/13/3/95-Ins.III dated 23.7.99, dated T-11/13/3/2001-Ins.III dated 16.1.2002 and No.T-11/13/3/2002-Ins.III dated 18.7.2002 relating to re-opening of cases where contribution has been determined under Section 45-A of the ESI Act.

The instruction dated 18.7.2002 clearly stipulates that Regional Directors should not hesitate to re-open ex-parte order under Section 45-A by exercising their discretion and after recording justification for re-opening of such cases.

In spite of all these instructions, it is observed that cases which would have been re-opened at RO / SRO level itself are being referred to Hqrs. Office on the one ground or the other. The matter is being discussed repeatedly in all the Regional Directors' Conferences, including the last one held on 27th - 28th November, 2008 at Bhubaneswar, where many of the RDs/JDs (I/c) had expressed that subsequent interference by vigilance is the real deterrent in re-opening and settling of such cases. The matter has been reviewed once again and it is reiterated that apprehension of possible Vigilance / Administrative action should not be a deterrent in re-opening of 45-A orders. Accordingly, following guidelines are being issued in the matter -

- (i) In the cases where dues have been assessed under Section 45-A of the Act either ex-parte or after affording personal hearing and if the employer comes forward with a request to re-open the case for assessment on actual basis and deposits at least 50% of the amount assessed under Section 45-A or the contribution due as per his own calculation, whichever is higher, the case may be re-opened after recording this reason. The dues payable / refundable after re-assessment may be realized or refunded as per the existing instructions.
- (ii) Reassessment in the cases so re-opened must be completed by the Branch Officer authorized for affording personal hearing within two months of such re-

opening under his personal supervision. Under no circumstances this period of two months will be relaxed.

- (iii) **Past cases, where the recovery action is already complete, shall not be re-opened.** However, where there is part recovery but actual recovery has not been effected, the cases can be re-opened as per the aforementioned guidelines.
- (iv) A report of all such cases be sent to Hqrs. Office on month to month basis, as per the extant instructions on this subject.
- (v) Vigilance should step-in for scrutiny of such action only where there is some prima-facie evidence of colourable exercise of power and after prior approval of Director General. In such case, at first, a clarification of the concerned officer shall be called for and the same shall be examined and put up before the Director General for taking a view in the case. If it is found that there is a prima-facie evidence of colourable exercise of power, only then further action can be initiated after approval of Director General.

After the above instructions / guidelines, the plea of RDs/JDs(I/c) that the fear of subsequent Vigilance / Administrative action deter them from re-opening genuine cases will no more be acceptable. Re-opening of genuine cases as per above guidelines is no irregularity. What must be ensured is that the case is positively finalized within two months of the date of re-opening. Any delay beyond two months in finalization will be viewed seriously.

This order will be effective from 01.01.2009.

This issues with the approval of the Insurance Commissioner / Director General.

Hindi Version will follow.

Yours faithfully,

(K. MISHRA)
ADDL. COMMISSIONER (REV.)

Copy to –

- (1) AC(NTA)/Zonal Training Officers.
- (2) All the Officers at Hqrs. Office.
- (3) All the Branches at Hqrs. Office.
- (4) Zonal Vigilance Officers.
- (5) Jt. Director (Fin.)/Dy. Director (Fin.)/AD(F) of Regional Offices/SRO.
- (6) Raj Bhasha Cell for Hindi Translation.