

GAHC010243942012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/47/2012

EMPLOYEE'S STATE INSURANCE CORPORATION,
REGIONAL OFFICE, N.E. REGION, BAMUNIMAIDAN, GUWAHATI-21

VERSUS

ASSOCIATED TEA INDUSTRIES
A FIRM, DULY INCORPORATED UNDER THE LAW, HAVING ITS FACTORY
AT UDYOG NAGAR, MAKUM ROAD, TINSUKIA-786146, ASSAM AND HEAD
OFFICE AT 1 OLD COURT HOUSE, STREET CORNER, KOLKATA, WEST
BENGAL.

Advocate for the Petitioner : MS.P BORGOHAIN, MR.K K NANDI

Advocate for the Respondent : ,

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

22.08.2024

Heard Mr. M. Smith, learned counsel for the appellant/Opposite Party.

None appears for the respondent/petitioner on call.

- 2.** Evident from the record that notice upon the sole respondent was served on 19.11.2016.
- 3.** Pertinent that by Order dated 25.07.2024, this Court directed listing of the matter for hearing today in the hearing column by giving the sole respondent a last opportunity to appear and contest the appeal.
- 4.** However, today when the matter is called for hearing, there is again no representation on behalf of the sole respondent. As such, the appeal is taken up for hearing.
- 5.** This appeal is presented under Section 82 of the Employees State Insurance Act, 1948 (*hereinafter referred to as the ESI Act*) against the impugned Judgment and Order dated 10.12.2009 passed by the learned Employees Insurance Court of Upper Assam, Dibrugarh in ESI Case No. 1/2007 (*hereinafter referred to as the ESI Court*).
- 6.** The relevant facts of the case are as follows:-

The respondent/petitioner is a firm duly constituted under the law having its factory at Tinsukia. The said factory is a Bought Leaf Factory (BLF) Tea Manufacturing Factory. The factory is not only a small scale industry but also a seasonal factory within the meaning of Section 2(12)/2(19-A) of the Employees State Insurance Act, 1948 engaged in manufacture of tea and Section 1(4) of the ESI Act has excluded such seasonal factory from its purview. However, the ESI authorities by misconception of law applied the ESI Act to the respondent/petitioner's firm.

- 7.** It further appears that thereafter the respondent/petitioner paid some

contribution as demanded. However, the respondent/petitioner having disputed the applicability of the ESI Act, filed the petition being ESI Case No. 1/2007 under Section 75 Clause (g) of the ESI Act, 1948 before the Employees' State Insurance Court, Upper Assam at Dibrugarh.

8. The ESI Court framed the following issues for determination: -

- 1) Whether the respondent/petitioner's factory is a seasonal factory?
- 2) Whether the respondent/petitioner had more than 9(nine) employees within the meaning of Section 2(9) of the ESI Act at any time including on the dates of inspection by the ESI Authority?
- 3) Whether the respondent/petitioner is liable to pay E.S.I contribution?
- 4) To what relief, if any, the respondent/petitioner is entitled to?

9. Thereafter, the appellant/Opposite Party after receiving notice entered appearance and contested the said case by filing written statement. Accordingly evidence by both parties were adduced. Thereafter, the ESI Court concluded the hearing and rendered its Judgment on 10.12.2009, whereby the petition filed by the respondent/petitioner was allowed and the coverage of the respondent/petitioner's factory under the ESI Act was held to be illegal, arbitrary and void ab initio, and to be not tenable in law.

10. Aggrieved by the aforesaid Judgment and Order of the ESI Court dated 10.12.2009, the present appeal was preferred under Section 82 of the said ESI Act.

11. This Court while admitting the present appeal on 14.06.2012 formulated

the following substantial questions of law.

“1) Whether the finding of the E.S.I Court that the respondent is a seasonal factory is correct in view of Section 2(19-A), the Court also having recorded a finding that the factory of the respondent remained engaged in production for about 9 months of the year?

2) Whether the finding that the factory of the respondent did not have more than 9 employees within the meaning of Section 2(9) of the E.S.I Act, 1948 is perverse to the evidence on record.”

12. Mr. Smith, learned counsel for the appellant/Opposite Party submits that both the substantial questions of law formulated by this Court on 14.06.2012 are questions of substance and has a direct bearing in the matter. He further submits that as regards the substantial question of law No. 1, the ESI Court entered an erroneous observation contrary to its own finding as regards the functioning and production of the subject factory for about nine months of the year. He accordingly submits that the decision of the ESI Court as regards non application of the ESI Act to the factory of the respondent/petitioner is totally perverse and erroneous. He further submits that the substantial question of law No. 2 as regards the employment of more than nine employees by the respondent/petitioner’s firm is totally contrary to the proved facts and therefore, the finding of the ESI Court to the same effect is totally perverse and erroneous.

13. I have given my prudent consideration to the arguments made by the learned counsel for the appellant/Opposite Party and perused the materials available in the case record received from the ESI Court, as well as the grounds stated in the appeal memo and the impugned Judgment and Order dated 10.12.2009. Also perused the citation relied by the learned counsel for the

appellant/Opposite Party.

14. Under Section 82 of the ESI Act, an appeal shall lie to the High Court from an order of the ESI Court only if it involves a substantial question of law. To be "substantial" a question of law inter-alia must have a material bearing on the decision of a case if answered either way in so far as the right of the parties before it are concerned.

15. In the present case, the two questions framed has a bearing on the decision of the case, answers to the questions effect the substantial rights of the parties to the petition. Therefore, the two questions framed include substantial questions of law.

16. I shall now decide the substantial question of law No. 1 as whether the finding of the ESI Court that the respondent/petitioner is a seasonal factory is correct in view of Section 2(19-A), the Court also having recorded a finding that the factory of the respondent/petitioner remained engaged in production for about nine months of the year.

17. Pertinent to refer to sub-section 19-A of Section 2 of the ESI Act which defines seasonal factory at the outset before entering to the merit of the question.

18. Section 2(19A) of the ESI Act is reproduced hereunder for ready reference:

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"2. Definitions.- In this Act, unless there is anything repugnant in the subject or context.-

[(19A) "seasonal factory" means a factory which is exclusively engaged in one or more

of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;]”.

19. Reading of the aforesaid definition appears that there are two category of factory which is envisaged to mean seasonal factory. The first category would include a factory which is exclusively engaged in the manufacturing process inter-alia of tea. The second category would include any manufacturing process which is incidental to or connected with any of the processes stipulated under the first category and includes a factory which is engaged for a period not exceeding seven months in a year in relation to any process of blending packing or repacking of tea.

20. Thus, in order for a factory manufacturing ‘tea’ to qualify as a “seasonal factory” will have to either satisfy that it is independently and exclusively involved in the manufacturing process of tea or additionally it is involved in the process of blending packing or repacking of tea and is not engaged for a period exceeding seven months in a year. The word “or” which is used to link alternative in the definition of “seasonal factory” itself provides that the existence of either condition will bring the factory manufacturing tea within the ambit of seasonal factory. Hence, existence of any of the two conditions as stated above will qualify a factory to be a seasonal factory.

21. Keeping the aforesaid definition in mind, let me now examine the evidence on the basis of which the ESI Court has set aside the applicability of ESI Act to the respondent/petitioner's factory.

22. It appears from the evidence of PW-1 i.e. witness of the respondent/petitioner that the respondent/petitioner is a Bought Tea Leaves Factory and deals in a business of buying raw tea leaves and manufacturing tea leaves and for manufacturing tea leaves it runs for 8 to 8½ months of the year. In this connection, it appears that the contention of the respondent/petitioner is that the same is a seasonal factory.

23. In order to prove the aforesaid, various documents such as the partnership deal, SSI certificate issued by the DIC, Tea Board Registration Certificate, Renewal Certificate issued by Tea Board etc. were exhibited in evidence. That apart agreement executed between the respondent/petitioner and the Electricity Supply Department, Daily Stock Register etc. were also exhibited.

24. It appears from the documents exhibited especially by referring to Exhibit 20 to Exhibit 30, which are letters written by the respondent/petitioner to the Central Excise Department, where under information as regards the date on which the respondent/petitioner's factory commences and closes its commercial production during a particular year is provided.

25. It further appears from the Exhibit 31 which is the Daily Stock Register that the respondent/petitioner's factory runs for about 9½ months of the year.

26. It further appears that during cross examination, the PW-1 clarifies that the production in the respondent/petitioner's factory starts in the month of March and continues till the 1st or the 2nd December and that the period between

December to March is maintenance period.

27. It further appears from the evidence of the appellant/Opposite Party witness No. 1, namely, Chandra Dhar Kalita, ESI Inspector that it is evident from the inspection of the respondent/petitioner's factory made during four years that every year manufacture in the respondent/petitioner's factory remains stopped due to non-supply of raw leaves but maintenance and repairing works continues during that period also. It further appears that from the said evidence that during the said period also trading and sale of tea leaves continues at the respondent/petitioner's factory. Thus, what is abundantly evident from the aforesaid evidence on record is that the respondent/petitioner firm is involved exclusively and independently in the manufacturing process of tea and therefore is qualified in terms of the Section 2(19A) of the ESI Act, as seasonal factory.

28. Apt to refer to sub section 4 of Section 1 of the ESI Act which is reproduced here below:-

“1. Short title, extent, commencement and application.-

(4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories:

[Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.]”

29. Therefore, it is clearly established that the respondent/petitioner firm being a seasonal factory is excluded from the application of the said ESI Act.

30. Accordingly, the finding of the ESI Court to the effect that though the

respondent/petitioner factory is not a seasonal factory covered by Category B mentioned above, it definitely is a seasonal factory covered by category A, is in consonance with the provision of the said ESI Act. Therefore, I answer the first substantial question of law No. 1 against the appellant/Opposite Party and in favour of the respondent/petitioner.

31. As regards the second substantial question of law No. 2, since it is established that the said ESI Act is not applicable to the respondent/petitioner's firm, the employees of the respondent/petitioner factory cannot be termed as employee within the meaning of Section 2(9) of the ESI Act. Hence, the substantial question of law No. 2 is also answered against the appellant/Opposite Party and in favour of the respondent/petitioner.

32. Accordingly, the Judgment and Order dated 10.12.2009 passed by the learned Employees Insurance Court of Upper Assam, Dibrugarh in ESI Case No. 1/2007 stands confirmed.

33. Resultantly, the appeal fails and stands dismissed.

No cost.

Return case record.

JUDGE

Comparing Assistant