

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.40619 of 2015
and
M.P.Nos.1 and 2 of 2015

Tamilnadu Cements Corporation Ltd,
Ariyalur Cements Works, Ariyalur,
Rep by its Unit Head

...Petitioner

Vs

1. The Government of Tamilnadu,
Rep by its Principal Secretary,
Labour and Employment Department,
Fort St.George, Chennai
2. The Deputy Director (INSPN)
Employees State Insurance Corporation,
(Ministry of Labour and Employment,
Government of India)
39/57, Theerthamala Vaniga Valagam,
Three Roads, Salem 636 009

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for records relating to the order passed by the first respondent in letter No.13875/L1/2015-1 dated 06.08.2015 quash the same and consequently direct the first respondent to reconsider the petitioner's application for exemption dated 03.06.2015 afresh within a time to be stipulated by this Hon'ble Court.

For Petitioner : Mr.A.Sivaji

For Respondent-1 : Mr.R.Lakshminarayanan
Additional Government Pleader

For Respondent-2 : Mr.P.Chandrasekaran

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.A.Sivaji, learned counsel appearing for the petitioner, Mr.R.Lakshminarayanan, learned Additional Government Pleader appearing for the first respondent and Mr.P.Chandrasekaran, learned counsel appearing for the second respondent.

3. The petitioner is a state owned company engaged in the production of cement. They submitted an application for exemption on 03.06.2015 to the first respondent as their factory is situated in Ariyalur, which is a notified area to be covered under the provisions of the Employees State Insurance Act, 1948 (herein after referred to as "Act") with effect from 01.02.2015. Accordingly, application in Proforma 'A', Appendix-B1 and comparative statement between the benefits under the ACT and the benefits extended by the Government were produced. Based on such application, the petitioner requested for exemption from the provisions of the Act for a period of one year from 01.02.2015 to 31.01.2016. The said application was returned on the ground that in terms of Section 87 of the Act renewal of exemption must be made before three months of the exemption period. Therefore, it is stated in the impugned order that the application for exemption for the period from 01.02.2015 to 31.01.2016 is belatedly received on 05.06.2015.

4. After hearing the learned counsel appearing for the parties, it is clear that the application submitted by the petitioner on 03.06.2015 is not an application for renewal but it is a fresh request made by the petitioner for grant of exemption. Therefore, the impugned order has been passed on wrong premise as if it is a request for renewal. It goes without saying that the Government has the discretion to grant exemption and the date of such grant alone would be relevant. However, if the Government decides to grant exemption from anterior date, it is for them to take a decision in such a matter. Therefore, since the application has been returned construing it as an application for renewal, the matter requires to be re-considered by the first respondent in accordance with law.

5. Accordingly, the Writ Petition is allowed and the impugned order is quashed and the first respondent is directed to consider the petitioner's application dated 03.06.2015 as a request for grant of exemption and not for renewal of exemption as the petitioner never had a benefit of exemption earlier.

The first respondent shall pass a reasoned order in the matter after affording an opportunity of personal hearing to the authorised representative of the petitioner Company. Such decision shall be taken within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

srn

To

1. The Principal Secretary,
Government of Tamilnadu,
Labour and Employment Department,
Fort St.George, Chennai
2. The Deputy Director (INSPN)
Employees State Insurance Corporation,
(Ministry of Labour and Employment,
Government of India)
39/57, Theethamala Vaniga Valagam,
Three Roads, Salem 636 009

1 cc to Mr.A. Sivaji, Advocate, Sr. 69292

1 cc to Mr.P. Chandrasekarn, Advocate, Sr. 56

W.P. No.40619 of 2015

CTK (CO)
kk 12/1

WEB COPY