



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.07.2015

CORAM:

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**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

CMA.(MD)No.92 of 2013

Joint Director, ESI Corporation,  
Sub-Regional Office,  
1-B, Old Post Office Street,  
Tallakulam, Madurai-2.

: Appellant/Respondent

Vs.

M/s.T.M.M.Mathalai Nadar Industries,  
68, Municipal Office Road,  
Virudhunagar,

Rep. By its Kartha Thiru.Kumaran Sathasivam :Respondent/Petitioner

Appeal filed under Section 82(2) of the ESI Act, 1948, to set aside the Order, dated 20.09.2012, passed by the ESI Court (I.e. Labour Court), Madurai in ESI OP No.59 of 2011, and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellant.

For Appellant : Mr.P.Ganapathisamy

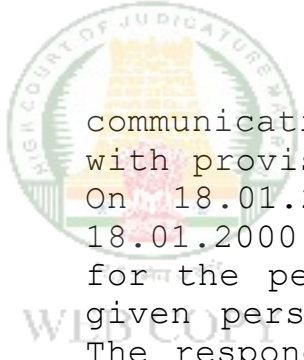
For Respondent : Mr.P.Chandrabose

#### JUDGMENT

The appellant is the respondent in ESIOP No.59 of 2011, on the file of the Employees' State Insurance Court, (Labour Court), Madurai.

#### 2.Facts of the case:-

The appellant is the Employees' State Insurance Corporation (hereinafter referred to as 'the said Corporation') and inspected the Industry of respondent on 30.01.1979 and submitted a report on 31.01.1979. At the time of inspection, it was found that, originally the Industry M/s.Muthu Oil Mill, Virudhunagar was dissolved and permanently closed with effect from 24.11.1978. One of the partners of M/s.Muthu Oil Mill started respondent's unit with effect from 25.11.1978. He started the said Industry with 22 employees on the rolls and names of 14 employees were not mentioned in the rolls at the time of inspection. On such inspection, it was found that the respondent's Industry was covered under the Provisions of the Employees' State Insurance Act (hereinafter referred to as 'the ESI Act') with effect from 30.01.1979. A code No.51-7877-06 was allotted to the respondent. A



communication was sent to the respondent, on 20.04.1979 to comply with provisions of ESI Act. The respondent did not send any reply. On 18.01.2000, the appellant sent C-18 Adhoc notice, dated 18.01.2000 to the respondent calling upon them to pay Rs.6,468/- for the period from 30.01.1979 to 31.01.1980. The respondent was given personal hearing on 20.03.2000, 20.04.2000 and 11.05.2000. The respondent also submitted a written reply. The contention of the respondent was not accepted and an order, dated 23.04.2001, under Section 45(A) of the ESI Act was passed. On receipt of the said order, the respondent filed ESIOP.No.59 of 2001, under Section 75(1)(a)(b) and (g) of The Employees State Insurance Act 1948 to declare that ESI Act is not applicable to the respondent and also to set aside the Order of the Deputy Director in No.57-7877-SRO MDU.INS II 45-A/562/00, dated 23.04.2001.

3. The appellant filed counter affidavit and it has been stated that the limitation prescribed under Section 77(i)(A) is not applicable and the claim of the appellant made by the order, dated 23.04.2001 is valid and respondent is liable to pay the amount. According to the appellant, the respondent is employing more than 10 persons and therefore respondent is covered under the Act and is liable to pay compensation.

4. Based on the pleadings and evidence, the ESI Court, (Labour Court) Madurai, framed necessary points for consideration.

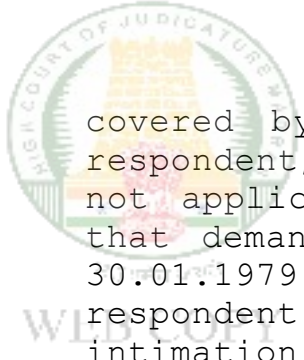
5. During the trial, the respondent examined one Kumaran Sathasivam as P.W.1 and marked 3 documents as Ex.P1 to Ex.P3. The appellant examined one Palanikumar as R.W.1 and marked 7 documents as Ex.R1 to Ex.R7. Considering the pleadings and evidence, the ESI Court (Labour Court) Madurai allowed the ESIOP filed by the respondent and set aside the order, dated 23.04.2001 and held that provisions of ESI Act is not applicable to the respondent. Against the said order, dated 20.09.2012, made in ESIOP No.59 of 2011, the appellant has come out with the present appeal.

6. The appellant in CMA raised 5 substantial questions of law. No question of law was framed by this Court at the time of admission.

7. On considering all the materials on record, the following substantial questions of law arise

- i) Whether claim of the appellant is barred by limitation.
- ii) Whether the Presiding Officer ESI Court is right in holding that provisions of ESI Act are not applicable to the respondent.

8. The learned counsel for the appellant contended that after the Inspection, Form -C-11 coverage intimation, dated 20.04.1979 was issued to the respondent. The respondent by the letter, dated 03.11.1980 requested the appellant to allot code number and send concerned circulars. Having admitted that the respondent is



covered by provisions of ESI Act and it is not open to the respondent, now seek a declaration that provisions of ESI Act are not applicable to their industry. The respondent cannot claim that demand by the appellant of Rs.6,468/- for the period from 30.01.1979 to 31.1.1980 is barred by limitation. Further, the respondent ought to have challenged the Form-C-11 coverage intimation, dated 20.04.1979 within three years from the date of receipt of the Form-C-11 coverage. The respondent cannot challenge the same in the ESI OP No.59 of 2011. For the above reasons, he prayed for allowing the CMA.

9.Per contra the learned counsel for respondent contended that appellant having inspected the Industry in the year 1979 cannot make a claim in the year 2000 for contribution as per provisions of ESI Act. The claim is barred by limitation especially by Section 77(i)(A) of the Act. Further, the learned counsel contended that respondent is not covered by provisions of ESI Act.

10.Heard the learned counsel appearing for the appellant and the respondent and considered all the materials on record and considered the arguments of the learned counsel for the appellant and the respondent.

11. The questions that has to be considered and decided in this appeal is:-

i)Whether claim of the appellant is barred by limitation.

ii)Whether the Presiding Officer ESI Court is right in holding that provisions of ESI Act are not applicable to the respondent.

12. Admittedly, the appellant inspected the respondent's Industry on 30.01.1979. The appellant issued Form-C-11 coverage intimation on 20.04.1979. After that, the appellant did not take any action. Only on 18.01.2000, after lapse of 21 years, the appellant issued C-18 notice and on 23.04.2011 passed an order under Section 45(A) of the ESI Act and demanded contribution for the period from 1979 to 1980. Even if the contention of the appellant that Section 77(1)(A) of the Act, is not applicable to the demand and appellant can make demand even after expiry of 5 years, is accepted, the appellant ought to have made a demand within a reasonable time. The demand made after 21 years of initial inspection, is not maintainable. Further, the appellant has not made any demand for the subsequent period. There is nothing on record to show that the appellant inspected the respondent industry after January 1979. The appellant cannot presume that the respondent continues to be covered by the provisions of Act. Therefore, the order of Presiding Officer ESI, Court does not suffer from any irregularity or illegality.

13. Even if no limitation is prescribed for making an demand, <https://hcservices.ecourtservices.nic.in/hcservlet> search demand in hcservlet be made within a reasonable time. Therefore, the claim of the appellant is not maintainable.



14. In the result, the substantial questions of law framed as above are answered against the appellant and the Civil Miscellaneous Appeal is dismissed. No costs.

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Sd/-  
Assistant Registrar (AE)

Sub Assistant Registrar

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To  
The Judge ESI Court (I.e. Labour Court), Madurai

+1CC tyo Mr.P.Ganapathy Samy Advocate Sr.No.41294  
+1CC to Mr.P.Chandrabose Advocate Sr.No.40578

GJM/SKS/RR/5.10.15-4P-4C

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