

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.879 of 2008

JUDGMENT:

The unsuccessful respondent had preferred this appeal under Section 82 of the Employees' State Insurance Act, 1948 ('the Act', for short) assailing the order dated 31.10.2006 of the learned Presiding Officer, Labour Court, Guntur, passed in E.S.I No.19 of 1999, whereby, the said learned Presiding Officer of the Labour Court while allowing the petition of the petitioner/respondent herein filed under Section 75 of the said Act had set aside the notice dated 29.01.1999 issued by the appellant/respondent and declared that the provisions of the Act are not applicable to the establishment of the petitioner/respondent herein prior to April 1993 and that therefore, the appellant/respondent is not entitled to recover ESI contributions from 4/92 to 3/95.

2. I have heard the submissions of the learned counsel for the appellant and the learned counsel for the respondent. The parties shall herein after be referred to as the appellant and the respondent for convenience and clarity.

3. The facts, in brief, are as follows: The appellant had sent notice dated 29.01.1999 demanding the respondent herein to pay ESI contributions in a sum of Rs.26,161/- for the period from 4/92 to 3/95. Aggrieved of the said notice, the respondent had approached the court below *inter alia* contending as follows: 'The respondent's establishment was started with effect from April 1992 and was and is manufacturing wooden furniture, i.e., tables, chairs, stools and cabins etcetera. The respondent had employed only 12 to 15 employees. He has been maintaining statutory registers etcetera; and, that the registers disclose that the strength of the employees is less than twenty at all times; and, that the respondent had purchased, in April 1995, one machine namely wood plainer and that since then he has been using power and paying ESI contributions and that prior to that date he was not using power

and that he was using power only for lights and fans and that therefore, the notice is liable to be set aside.' Before the court below, the appellant herein had contended as follows: 'At the time of inspection by the Inspector concerned, the ledgers of the establishment were verified. And from the ledger entry it is noticed that a sum of Rs.10,000/- was incurred in the year 1992-93 towards repairs of machinery. From the said fact, it is evident that the respondent is using machinery, which is being operated with the aid of power, for manufacturing wooden items. The respondent had also admitted in the Form-01 submitted by him that power was and is being used from the inception. The said admission also indicates that the power was being used from 01.04.1992. Hence, the establishment of the respondent is covered under the provisions of the Act even from 01.04.1992. In view of these facts, the notice demanding the said amount is valid and not liable to be set aside.' At trial, the respondent herein and a supporting witness were examined as PWs 1 and 2 and exhibits P1 to P4 were exhibited on the side of the respondent herein. The officers concerned of the appellant were examined as RWs 1 and 2 and exhibits R1 to R18 were marked on the side of the appellant. On merits, the court below had allowed the petition of the respondent herein and had set aside the notice holding that the appellant is not entitled to recovery any amount of contribution from the respondent for the period 4/92 to 3/95. Therefore, the aggrieved appellant is before this Court.

4. In this back drop, it is to be examined as to whether or not the order of the Court below is sustainable in the facts and circumstances of this case. PW1 is the petitioner/respondent herein. He asserted his pleaded case in his oral evidence. He had also examined PW2, a carpenter of his establishment. PW2 had corroborated the version of PW1 that cutting machine was not used in the establishment of PW1 prior to 1995 and he had denied the suggestion that lathe machine and wood plainer machine were being used in the establishment of PW1 since 1992 onwards. The evidence of RW1 shows that the Inspector visited the establishment of PW1 in the year 1998, whereas the subject period relates to 04/92 to 03/95. The petitioner has admittedly been contributing ESI contributions from 1995 onwards. The disputed period

is a period prior to 1995. The cases pleaded by both the sides are already stated supra. Contentions are advanced by both the sides in line with the respective pleadings. The contents of the exhibits marked are as follows: 'Ex.P1 is letter of the Valiva Engineering Works, Guntur; exhibit P2 is the letter of the respondent herein in regard to coverage final date; exhibit P3 is the copy of the letter of the respondent herein; and, exhibit P4 is the muster roll Register. Exhibit R1 is the forwarding letter of ESI Inspector; exhibit R2 is the copy of visit note; exhibit R3 is Form C-10; exhibit R4 is copy of certificate of registration; exhibit R5 is the copy of a document showing the details of ownership; exhibit R6 is registration certificate issued by Industries Department; exhibit R7 is Form 01; exhibit R8 is Form C11; exhibit R9 is postal acknowledgment; exhibit R10 is report of ESI Inspector; exhibits R11 and R12 are photostat copies of lease agreements; exhibit R13 is the copy of registration and licence document of the factory; exhibit R14 is copy showing renewals; exhibit R15 is the copy of certificate of registration; exhibit R16 is copy of certificate of registration under CST Rules; exhibit R17 is copy of provisional certificate; and, exhibit R18 is letter of the respondent herein.'

5. The learned counsel for the appellant would contend as under: 'In Form 01, the respondent had made a categorical admission that he has been using power since the inception. The said admission would mean and disclose that he is using the electricity/power even by the year 1992. A verification of his ledger maintained in the regular course of business also disclosed that a sum of Rs.10,000/- was spent on repairs of the machinery. That fact also would indicate that he was using machinery run by power for manufacturing wooden items. Therefore, his establishment is covered by the provisions of the Act with effect from 01.04.1992. Accordingly, the respondent's establishment is liable to pay contributions as demanded in the notice. These two material aspects, which are not considered by the court below, constitute substantial questions of law.'

6. On the other hand, the learned counsel for the respondent would contend as under: 'As per the provision of Section 82 of the Act, unless substantial questions are involved, the appeal is not maintainable. Both the

aspects raised are mere questions of fact; and, no point of law is involved in the said contentions. The court below had properly appreciated the evidence in juxtaposition with the facts. There is neither non-consideration of material evidence nor improper appreciation of evidence. Therefore, the appeal is devoid of merit.'

7. I have bestowed my attention to the facts. I have noted the submissions.

7.1 Coming first to the contention that power was being utilised for running machinery being used for manufacture of furniture and that in that regard an admission was made in them Form 01 to the effect that power was being used from the inception, what is to be noted is that at the earliest opportunity, the respondent had offered an explanation to the effect that in saying that power was being used from the inception, he had only intended to say that the power was being used for lights and fans and that such a statement cannot be taken as an admission that he was using power for running machinery during the subject period. It is his further case that in fact he was not using power for running any machinery and that the machinery, which required power for its running/operation, was purchased in April 1995 only. He had also produced a receipt under exhibit P1 into Court; the same on a perusal would show that the certain machinery was purchased in April 1995 only. Coming to the ledger entry, which was sought to be relied upon in respect of repairs of machinery by paying Rs.10,000/- during the year 1992-93, merely on the basis of such an entry, any inference being sought to be requested to be drawn by the appellant cannot be drawn as not even the ledger entry was exhibited. No evidence was collected from the Electricity Department and was produced on the side of the appellant to show that electricity was being used in large quantities and that consumption charges were being paid in huge sums prior to the purchase of the machinery in April, 1995 by the respondent herein. Having properly appreciated the evidence brought on record, the Court below has accepted the explanation offered by the respondent that in mentioning in Form 01 that the power was being used

he had only intended to say that power was being used only for lights and fans. Having noted that the machinery was purchased in April 1995 as borne out by exhibit P1, the Court below had come to the conclusion that merely because some expenditure was shown in the ledger to have been incurred on repairs of machinery, an inference cannot be drawn that repairs were affected to the machinery that was being run on electric power. The evidence does not disclose that the ledger entry discloses that repairs were affected to any machinery which can be run only on power. The learned Presiding Officer of the court below had *inter alia* held that wood items can be manufactured even by manual operated machines and that there is no evidence to hold that the machines that were got repaired and were being put to use during the relevant period were the machines being run on power and that in the absence of any evidence that any machinery which can be operated by use of power was purchased prior to 1995, an inference cannot be drawn that the establishment was using power run machinery during the period from 4/92 to 3/95.

7.2 Coming to the aspect in regard to the existence of a lathe machine and a cutting machine in the establishment of the respondent herein, the evidence on record shows that adjacent to the establishment of the respondent, there is a Saw Mill of one P. Prasad and that he was having licence from the Factories Department in his name and that he is also a lessee of the same lessor, who is no other than the father of the respondent herein. Coming to the further contention that the lease agreement in favour of P. Prasad was created to show that the machinery does not belong to the establishment of the respondent herein, what is to be noted is that not only a lease agreement but also exhibit R12, the licence under the Factories Act obtained in the year 1992 (i.e on 21.10.1992) in favour of P.Prasad was also produced. Therefore, the evidence on record would only suggest that the lathe machine and cutting machine are of the establishment of P.Prasad and that he has been running his Saw Mill in that place, which is adjacent to the place of the establishment of the respondent herein. Therefore, the contention of the appellant that the lease agreement is fabricated cannot be accepted. On the

other hand, there is sufficient and reliable evidence to safely conclude that the said machinery of the Saw Mill does not belong to the establishment of the respondent.

7.3 Having thus considered the facts and analysed the evidence, this Court finds itself in agreement with the findings of the court below, which are recorded after accurately considering the facts and properly appreciating the evidence.

8. Viewed thus, this court finds that there are no substantial questions involved and that there is no substance in the questions raised as substantial questions and that the appeal is devoid of merit and is liable to be dismissed.

9. In the result, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

18th June 2015
RAR