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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS PATENT APPEAL NO. 2/2012**

% Date of decision: 27th July, 2016

LEPAKSHI EMPORIUM & ORS. ..... Appellants

Through Mr. K.P. Sunder Rao & Mr. Sanjeev Kumar, Advocates.

versus

EMPLOYEES STATE INSURANCE CORPORATION.Respondent

Through Mr. K.P. Mavi & Mr. B.P. Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

The appellant-M/s Lepakshi Emporium, located in Delhi, is a unit of A.P. Handicrafts Development Corporation Limited, Hyderabad.

2. The appellant had filed Writ Petition (C) No. 6103/2007 primarily impugning letters/orders dated 16th October, 2006 and 9th February, 2007 passed by the Employees State Insurance Corporation (ESIC).

3. The writ petition was dismissed by the impugned order dated 11th November, 2011, which records:-

W.P.(C) 6103/2007

I have heard learned counsel for the parties.

> In this writ petition the petitioners are challenging the demand raised by the Employees State Insurance Corporation (ESIC) on account of their contributions under Sections 39 and 40 of the Employees State Insurance Act in respect of the period from September, 2004 to March 2005. Their plea is that they already stand exempted from any such contribution by the State of Andhra Pradesh and since the petitioner no.1 is only a Unit of respondent no.2 being run and maintained for all purposes including payment of salaries of the employees posted there by the Andhra Pradesh Handicrafts Development Corporation Ltd., they are not supposed to make any contribution or to file any returns.
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> A perusal of the paper book shows that after petitioner no.1 had received a demand notice and then a show cause notice for non-compliance of its demand notice by the respondent (ESIC) they had approached, sometime in May, 2006, the Secretary (Industries and Commerce) Govt. of Andhra Pradesh, Hyderabad with a request for issuance of ESI exemption to the petitioner no.1. However, no exemption, as was sought for, appears to have been granted and in fact the petitioners have not even claimed that the same was granted. Therefore, there is no force in the stand taken by the petitioners that since petitioner no.2 has been exempted by the State of Andhra Pradesh from making any contributions under the ESIC Act to its unit at Delhi, namely petitioner no.1 also gets exempted. Therefore, I do not find any merit in this writ petition and the same is dismissed.
>
> The interim order earlier granted in favour of the petitioners staying the recovery of dues, which was impugned, also stands vacated."

4. Learned counsel for the appellant relies on the exemption granted to Andhra Pradesh Handicrafts Development Corporation Limited under Section 90 of the Employees State Insurance Act, 1948 (Act, for short).

5. The said exemption was granted by the Government of Andhra

Pradesh and published in the Gazette dated 29th July, 1992. The exemption under Section 90 is not for a limited period of one year as would be in a case where exemption is granted under Section 88 of the Act. Further, exemption was granted with retrospective effect from 1982. This aspect has not been examined and gone into in the letters/orders dated 16th October, 2006 and 9th February, 2007. The order of the single Judge under challenge, we would observe, erroneously records that no exemption as sought, appears to have been granted and the appellants, who were the petitioners, had not even claimed that the same was granted.

6. The primary issue and question raised was whether the exemption notification dated 29th July, 1992 issued by the Government of Andhra Pradesh would cover the Lepakshi Emporium's branch located at Delhi. The stand taken by the respondent-ESIC in their letter dated 25th / 28th May, 2007 was that the Government of Andhra Pradesh was not the appropriate Government to grant exemption to a unit or employees posted in Delhi for the exemption granted by the State of Andhra Pradesh was valid only in the State of Andhra Pradesh.

7. Per contra, learned counsel for the appellant relies on ***Transport Corporation of India versus Employees' State Insurance Corporation and Another***, (2000) 1 SCC 332. He submits that the effect of a State notification would not have extra territorial operation, when the branch operating outside the State has functional integrity with the activities of the

main establishment. The functional integrity test should be applied by examining the question of unity of relationship between the employees working in the different State establishments, permissibility of their inter-State transfer, business and activities of all branches, whether there were consolidated balance sheets etc. Applicability and satisfaction of this test has not been considered and applied in the letters/orders dated 16th October, 2006 and 9th February, 2007.

8. It is noticeable that by way of an amendment, Section 91AA was inserted with effect from 1st June, 2010. Section 91AA states that notwithstanding anything contained in the Act, establishments located in States where medical benefits are provided by the Corporation i.e. ESIC, the Central Government shall be the appropriate Government. Pertinently, in the present case, the notification relied upon by the appellants is dated 29th July, 1992. The said notification was issued under the powers conferred by Section 90 read with Section 91A of the said Act, which empowers grant of exemption with retrospective effect.

9. The respondents submit that the judgment in ***Transport Corporation of India*** (supra) would not apply for several reasons. Lepakshi Emporium, Delhi does not have functional integrity with the head office. Further, ***Transport Corporation of India*** (Supra) dealt with a different issue of whether the Act would apply even when employees working in a branch were less than twenty. The ratio would have no application in the present

case as Lepakshi Emporium, Delhi had more than twenty employees.

10. We feel that the issues and contentions raised by the appellant require consideration and have not been addressed, elucidated and discussed in the two letters/orders dated 16th October, 2006 and 9th February, 2007. The order passed by the learned single Judge also, does not deal with the issues and contentions raised by the appellant, including the reliance placed on ***Transport Corporation of India*** (supra).

11. Keeping in view the aforesaid position, and as facts have not been ascertained and factored, we allow the present appeal and set aside the orders dated 16th October, 2006 and 9th February, 2007, with an order of remand to the authorities to pass a fresh order after hearing the appellant. The impugned order dated 11th November, 2011 is also set aside. The fresh order will specifically deal with the contentions and issues raised by the appellant, including reliance placed on the exemption notification dated 29th July, 1992, and the decision in ***Transport Corporation of India*** (supra).

12. To cut short delay, the representative of the appellants is directed to appear before the authorities concerned on 22nd August, 2016, when a date for further proceedings will be fixed.

13. We clarify that the observations made above are merely for deciding the present appeal and will not be treated as binding or conclusive findings on law or facts. All issues, including whether decision or the ratio in

Transport Corporation of India (supra) is applicable, are left open.

14. The appeal is disposed of. There will be no order as to costs.

SANJIV KHANNA, J.

JULY 27, 2016 **SUNITA GUPTA, J.**
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