



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1066 of 2015 and
M.P.(MD) Nos.1 and 2 of 2015

Maniraj & Co,
Tuticorin, through its
Managing Parter,
N.Maniraj Kumar

... Appellant

Vs.

E.S.I Corporation,
Tirunelveli,
Rep.by its Joint Regional Director.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 82 of the Employees State Insurance Act, 1948 to set aside the order dated 05.06.2015 passed by the Labour Court, Tirunelveli in ESIOP.No.14 of 2012.

For Appellant : Mr.M.E.Ilango
For Respondent : Mr.K.C.Ramalingam

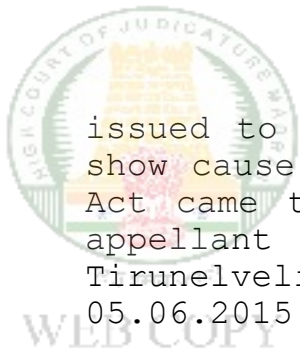
JUDGMENT

Heard the learned counsel on either side.

2.The establishment has filed this appeal questioning the dismissal of its petition filed under Section 75(1)(g) of the ESI Act by the ESI Court.

3.Maniraj & Co, Tuticorin is an establishment covered under ESI Act, 1948. Since the employees employed by it dwindled to zero, it stopped remitting contribution. While so, an inspection was conducted by the Social Security Officer on 17.07.2008. It was found that in the first floor of the same building another establishment in the name of Manoharan Electronics was being run. It is not in dispute that both Maniraj & Co and Manoharan Electronics are run by the same partners. The businesses are one and the same. Manoharan Electronics did not have any name board outside the building. It is true that for it separate RC Number had been allotted. In Manoharan Electronics, it was found there were five employees.

4. It is the case of the appellant counsel that out of the five, three were demonstrators of the manufacturers and only two were employees. However, applying the principle of clubbing, notice was



issued to the appellant. The appellant did not reply to the said show cause notice. Therefore, orders under Section 45 A of the ESI Act came to be passed on 06.09.2012. Challenging the same, the appellant herein filed ESIOP.14 of 2012 before Labour Court, Tirunelveli. The Labour Court dismissed the petition by order dated 05.06.2015. Challenging the same, this appeal has been filed.

5.The learned counsel appearing for the appellant reiterated the contention set out in the grounds of appeal. It is his submission that the two establishments namely, Maniraj & Co and Manoharan Electronics are different entities and that they could not have been clubbed.

6.Per contra, the learned standing counsel appearing for the ESI Corporation pointed out that the principal of functional integrality is clearly applicable in this case. He relied on the decision reported in **2005 (3) LLN 1162 (R.D, E.S.I Corporation v. Aruna Stores, Prop. J.Shantha)**. It is not in dispute that Manoharan Electronics is functioning in the very same premises and partners are one and the same. There is not even a name board indicating Manoharan Electronics. The principle of functional integrality was rightly applied in this case. As per Section 1(6) of the ESI Act, when an establishment came to be covered originally, it will continue to remain covered notwithstanding that the number of employees have fallen below the ceiling limit. It is also seen that the demonstrators were paid only by the establishment herein and not by the manufacturers.

7.Therefore, I sustain the contention of the learned standing counsel appearing for the ESI Corporation. No substantial question of law arises for determination in this appeal. This appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judge, Labour Court, Tirunelveli.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.K.C.RAMALINGAM, ADVOCATE IN SR No. 87071

SKM

TE/JC/SAR-1 : 30/11/2017 : 2P/4C
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