



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1151 of 2016
and
C.M.P (MD) No.10352 of 2016

1.The E.S.I. Corporation, Tirunelveli,
Sub Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoondurai,
Tirunelveli-627 001.
Represented by its Joint Director,
Now at Vannarapettai.

2.The Recovery Officer,
Sub Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoondurai,
Tirunelveli-627 001.

... Appellants/Respondents

Vs.

Arasan Beedi Company(P) Limited,
47, Ambai Road,
Melapalayam,
Tirunelveli-627 005.

...Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948, to set aside the order dated 22.01.2015 passed by the ESI Court (I.e Labour Court), Tirunelveli in ESI OP No.05 of 2013, and allow this Civil Miscellaneous Appeal with necessary directions in favour of the appellants.

For Appellants	: Mr.P.Ganapathisamy
For Respondent	: Mr.M.E.Ilango

JUDGMENT

Heard the learned counsel on either side.

2.The respondent in this Civil Miscellaneous Appeal enjoyed exemption from the provisions of the Employees' State Insurance Act by virtue of the notification issued by the State Government under Section 87 of the Employees' State Insurance Act till 2010. The respondent is a Beedi Manufacturing Industry. The Association representing the beedi manufacturers moved the State Government to continue to exempt the industry from the application of the provisions of the Employees' State Insurance Act. But the said



request was rejected by the Government of Tamil Nadu by an order dated 14.03.2011. The same was challenged before this Court in W.P. (MD).No.5654 of 2011. The said writ petition came to be allowed on 24.02.2014 in the following terms.

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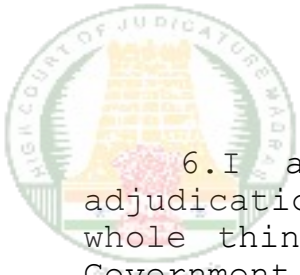
"6.Thus, for the reasons discussed above, this Court is of the view that the impugned order of rejection is liable to be set aside and the first respondent can be directed to consider the application, dated 01.12.2009 for renewal of exemption for the period mentioned therein, in the light of the identical orders passed in the earlier occasions and in the light of the observation made in this order.

7.In the result, the impugned order stands quashed with further direction issued to the first respondent to consider and pass appropriate orders on the petitioner application dated 01.12.2009, as reminded on 15.04.2010, in the light of the identical earlier orders passed in G.O.MS.No.696, dated 22.12.2009 and in the light of the observation made in this order in respect of the impugned amendment introduced to Section 87 of the Employees State Insurance Act and with the further direction issued to the respondents 2 and 3 not to make any demand under the relevant provisions of the Act. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order."

3.Pursuant to the aforesaid direction given by this Court, the matter is presently pending before the State Government. This Court informed that the State Government is yet to pass final orders on the application for continuation of the exemption. However, it is admitted that the industries are enjoying exemption for the period post 2015. The period in dispute is only from 01.01.2010 to 31.12.2015. In the mean while, the appellant Corporation passed an order at 06.08.2012 under Section 45(A) of the Employees' State Insurance Act. They proceeded to enforce the order also. Aggrieved by the same, the respondent herein filed E.S.I.O.P.No.5 of 2013, before the Labour Court, Tirunelveli.

4.The Labour Court by order dated 22.01.2015, allowed E.S.I.O.P.No.5 of 2013 and directed the appellant Corporation not to proceed the matter till the Government passed an order on the industries request for exemption. Further direction was given for refund all the amount and contribution recovered from the respondent herein.

5.The learned counsel appearing for the respondent submitted that this direction issued by the Labour Court has since been complied with.



6.I am therefore of the view that nothing survives for adjudication in this Civil Miscellaneous Appeal. As of now the whole thing would depend on the order to be passed by the State Government. I would therefore leave open all the issues. However, it is made clear that the power of the appellant Corporation to take appropriate action in accordance with law, pursuant to the order to be passed by the State Government for exempting the respondent for the period from 01.01.2010 to 31.12.2015 is sustained. It is made clear that such an action shall not be frustrated by pleading the bar of limitation.

7.With this observation, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer, ESI Court (I.e Labour Court), Tirunelveli.

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+1CC to Mr.P.Ganapathisamy, Advocate, SR.No. 94212

+1CC to Mr.M.E.Ilango, Advocate, SR.No. 93962

C.M.A. (MD)No.1151 of 2016

20.12.2017

tsg

AM/KKR/SAR 4/13.02.2018/3P/6C