



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1318 of 2016

The Deputy Regional Director,  
Employees' State Insurance Corporation,  
"Panchdeep Bhavan", 4<sup>th</sup> Main Road,  
K.K.Nagar, Madurai - 625 020.

... Appellant / Respondent

Vs.

M/s.Sri Ram Saw Mill through its Partner  
H.Ashok,  
Santhai Road, Mettupatty,  
Dindigul - 624 002.

... Respondent / Petitioner

Prayer: Appeal filed under Section 82 of the Employees' State Insurance Act, 1948 against the order dated 19.03.2015 made in E.S.I.O.P.No.36 of 2002 on the file of the Labour Court (Employees' State Insurance Court or, in short, ESI Court), Madurai.

For Appellant : Mr.P.Ganapathisamy

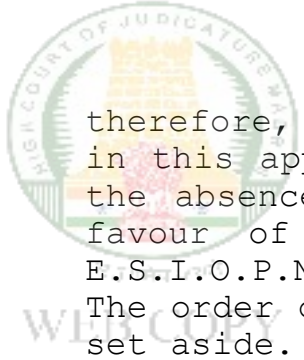
For Respondent : No appearance

#### J U D G M E N T

Heard the learned counsel appearing for the appellant.

2. The ESI Corporation has filed this appeal questioning the order dated 19.03.2015 passed by the Employees' State Insurance Court (hereinafter referred to as 'ESI Court'), Madurai in E.S.I.O.P.No.36 of 2002. The issue is one of the coverage. The case of the establishment is that the number of workers employed by it is below the ceiling limit. On the other hand according to the Corporation more than 30 employees are employed in the respondent establishment. The appellant Corporation passed an order dated 04.01.2002 under Section 45A of the Employees' State Insurance Act (hereinafter referred to as 'ESI Act'). This was questioned before the ESI Court.

3. It is seen that before the ESI Court workers were not made as parties either in individual capacity or in a representative capacity. The Hon'ble Supreme Court has consistently held that in matters relating to coverage or payment of contribution, the workers are necessary parties. In other words, in their absence this issue regarding applicability of ESI Act cannot be decided. I am



therefore, of the view that the substantial question of law raised in this appeal as to whether the coverage issue can be examined in the absence of workers as party has to be necessarily answered in favour of the appellant. The order dated 19.03.2015 made in E.S.I.O.P.No.36 of 2002 on the file of the ESI Court is set aside. The order dated 04.01.2002 under Section 45A of the ESA Act is also set aside. The matter is also remitted to the file of the original authority for fresh determination in accordance with law after issuing notice to the workers either in individual capacity or in a representative capacity. The Civil Miscellaneous Appeal stands allowed, accordingly. No costs.

Sd/  
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Labour Court,  
(Employees' State Insurance Court or, in short, ESI Court),  
Madurai.

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KK/KKR/02.05.2018/SAR-2/2P-2C