



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.187 of 2016

The Deputy Director,
ESI Corporation, Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai -20.

... Appellant

Vs.

Ramani Packaging Ic,
72, Ezhukadal Street, Madurai,
Rep.by its Proprietor.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 82(2) of the ESI Act, 1948 to set aside the decree and judgment of the ESI Court, Labour Court, Madurai passed in ESI OP.No.53 of 2006 dated 25.11.2015.

For Appellant	: Mr.K.C.Ramalingam
For Respondent	: Mr.M.N.Ramkumar

JUDGMENT

This appeal has been filed by ESI Corporation questioning the order dated 25.11.2015 made in ESIOP.No.53 of 2006 on the file of the Labour Court, Madurai.

2.The respondent is an establishment dealing with packaging items. One Thiagarajan is running the said establishment in the name and style of Ramani Packaging Inc, 72, Ezhukadal Street, Madurai. There was an inspection of the said establishment by the Inspector of the Corporation on 29.01.2004. He noted that the neighbouring premises bearing No.71, Ezhukadal Street, Madurai was occupied by Bathrinarayanan S/o. Thiagarajan and he was also carrying the same business in the name and style of Dhanush Packaging. In Ramani Packaging Inc there were five employees in Dhanush Packaging there were 7 employees. Put together the number comes to 12. Since according to the appellant corporation power was exceeding 10, it was above the ceiling limit of 10 and therefore the respondent is liable to be covered. Notice was issued.



Finally, an order dated 31.03.2006 under Section 45 A of the Act was passed levying contribution of Rs.61,133/- on the respondent.

3.The respondent filed ESIOP.No.53/2006 on the file of Labour Court, Madurai questioning the said order passed under Section 45 A of the Act. The Labour Court allowed the said OP by order dated 25.11.2015. Aggrieved by the same, the ESI Corporation has filed this appeal. The said appeal was admitted by this Court.

4.Heard the learned counsel on either side.

5.The learned standing counsel appearing for the appellant corporation contended that this Court should take note of the fact the establishments were being run in adjacent premises. One is run by the father, the other is run by the son. In both, the nature of the businesses is one and the same. Therefore, the principle of functional integrality is very much applicable in this case. He justified the order, clubbing both the establishments and bringing the same within the coverage of the statutory provisions.

6.On the other hand, the learned counsel appearing for the respondent endeavoured to sustain the order passed by the ESI Court. It is beyond dispute that the inspection report was relied upon to pass the order under Section 45 A of the ESI Act. It was admitted by the ESI Official who was examined as RW.1. But the said report was not furnished to the respondent.

7.On the sole ground of violation of principle of natural justice, the impugned order passed under Section 45 of the Act was liable to set aside. Therefore, the Labour Court rightly set aside the same. When on the ground of violation of principle of natural justice an order is set aside, the matter is remitted to the file of the authority for fresh consideration in accordance with law. But, in this case, such a course of action cannot be adopted. This is for more than one reason. Before passing the order, the authority did not issue notice to Bathrinarayanan who was running the other unit, namely, Dhanush Packaging. Except to show that one establishment was run by the father and the other is run by the son and that the nature of business is similar, there is nothing else to show common ownership on changeability and their interdependence.

8.The principle of functional integrality cannot be casually invoked. In this case, the establishments are run in separate premises. They are having separate electricity connections. They have statutorily assessed to taxes separately. It is true that one is run by the father and the other is run by the son. But, <https://hcservices.ecourts.gov.in/hcservices/> is not enough to club both. Therefore, the learned Judge of the Labour Court rightly did not remand the matter. The



order allowing ESIOP No.56 of 2006 is a well reasoned one. No substantial question of law has arisen for determination in this appeal. This appeal is dismissed. No costs.

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/True Copy/

Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar

To

The Judge,
ESI Court, Labour Court,
Madurai.

+1cc to M/S.K.C.Ramalingam, Advocate SR.No. 87072

C.M.A. (MD) No.187 of 2016
14.11.2017

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JM/KK/SAR 1/30.11.2017/3P/3C