

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.04.2018
Pronounced on	25.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3586 of 2010

1. Regional Director,
Employees State Insurance
Corporation Ltd.,
143, Sterling Road,
Chennai -34
2. The Special Tahsildar,
ESI Recoveries,
Ezhilagam Annexe,
Chennai -5. ... Appellants/Respondents

Vs

Shree Venkatesa Engineering Works,
represented by its Proprietor
S.Palani, 93 Paper Mills Road,
Perambur, Chennai 600 011 ... Respondent/petitioner

PRAYER: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948 against the decree and judgment of the City Civil Judge, Chennai passed in E.S.I.O.P.No.24 of 1994 dated 18.11.1999.

For Appellants : Mr. N. Suresh Kumar
Mr.K.C.Ramalingam

for Respondent : Mr.V.B. Selvaganapathy

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the decree and judgment of the City Civil Judge, Chennai passed in ESIOP No.24 of 1994.

2. The petitioner before the ESIOP is the Proprietor of Small Scale Industries Unit. The petitioner has stated that he is regularly complying the provisions of ESI Act from 1.6.1988 as the minimum number of employees required for coverage under the said Act. He had stated that on 22.7.1991, he received Form C-18 notice from the 1st respondent who is the Regional Director, Employees State Insurance Corporation to show cause

as to why assessment should not be made as per the notice. The said notice also attached the calculation sheet. During the personal hearing, the petitioner has informed the respondent that he never employed 10 or more persons during the period from 26.10.1994 to 31.5.1988. Further, he could not produce the records such as Attendance Registers, Wages Registers and General Register for the said period as they were destroyed in the flood during the year 1989. But the balance sheet for the above said period was filed by the petitioner.

3. It is the grievance of the petitioner that these factors which are submitted before the 1st respondent was considered and it was found that he has to pay the dues of Rs.44,688/- as contribution by calculating Rs.880/- per month per employee and the 1st respondent has also initiated revenue recovery proceedings by way of claim.

4. It is also the grievance of the petitioner that the Industry has become a sick industry and not working for most of the time up to June 1988 and the fact was also informed to the 1st respondent to bring the petitioner's establishment under the said coverage. Whereas the 1st respondent has stated that the petitioner's Establishment was started on 1.6.1998. At the time of inspection on 9.7.1991, it was found that the petitioner has engaged 25 persons on the date of inspection for wages. Hence the petitioner was issued with Form C 18 notice calling for compliance, but even at the time of opportunity given for personal hearing, the factum of destruction of relevant documents were not stated before the 1st respondent. Hence the explanation by the petitioner that those documents were destroyed by floods was not considered by the 1st respondent. Hence the petitioner is to comply the demand.

5. Before the court below, the petitioner was examined as PW1. The show cause notice was marked as Ex.P.1, in which, the contribution of the petitioner was calculated from 26.10.1984 to 31.5.1988 for Rs.51,329/-. The representation before the 1st respondent by the petitioner was that he never employed more than 5 persons beyond any date prior to 1.6.88. It is also the evidence of the petitioner that he claimed insurance on account of the damages to the factory due to floods, for which, he received compensation from the Insurance Company. It is also observed by the Court below that at no point of time, i.e., from 1.6.1988 more than 5 persons were employed in the said establishment before the Court below. PW1 was examined who inspected the petitioner premises on the date of inspection. Ex.R.2 is the Inspection report. The said inspection report was prepared by one Appar Sundaram, but he could not give evidence before the Court because of the total blindness for which, Ex.R1 Medical certificate was filed before the Court below. Hence regarding the report that was produced before the Court below,

the petitioner was unable to cross examine the said witness with regard to Ex.R.1 and its details.

6. The factum of destruction of records, attendance Registers and wage Registers were destroyed in the year 1989 was proved by the petitioner by producing the insurance claim before the concerned authorities. Hence the Court below could not form an opinion that more than 10 persons were working in the establishment from October 1984 to 1988. Hence the proceedings under section 45(A) was passed without considering the representation made by the petitioner. The Court below find that there is no basis for the respondent to arrive at such a conclusion. It is also observed by the order of the respondent which is printed form is not a Speaking order and there is also blank spaces and hence the said proceedings was made without application of the mind and also in violation of the principles of natural justice. Hence the has allowed the petition by stating that Ex.P.3 to P.7 are made without any basis or information. The court below, based on the documents and evidence placed before the same, allowed the petition filed by the petitioner.

7. On perusal of the documents and evidence and also the finding of the Tribunal, it is observed that the petitioner's establishment was started in the year 1984 and at no point of time, the petitioner employed more than 10 persons and there is also no sufficient document and proof to the effect that the 1st respondent employed more than 10 persons as employees and it has paid the contribution is not clearly proved.

8. The petitioner could not furnish any relevant documents relating to Attendance Register, Wages Register and General Ledgers for the said period as they were destroyed in flood in the year 1989. But the petitioner produced relevant insurance papers to prove the same. The balance sheets for the said period also produced by the petitioner which contains the particulars of wages paid. The inability to employ more than 10 persons during the said period also revealed in the balance sheet for the period of 1984-1985, 1985-1986, 1986-1987 and 1987 - 1988. Hence the order of the respondent under section 45A without taking into consideration of any of the representation made by the petitioner is the one found without any basis is acceptable one.

9. Further through the Inspection Report-Ex.R2 with regard to the inspection, nothing was proved before the Court below. Hence the order of the Tribunal has to be confirmed due to the above said discussions.

10. In the result, the civil Miscellaneous Appeal is dismissed confirming the decree and judgment passed by the City Civil Judge, Chennai in ESIOP.No.24 of 1994. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

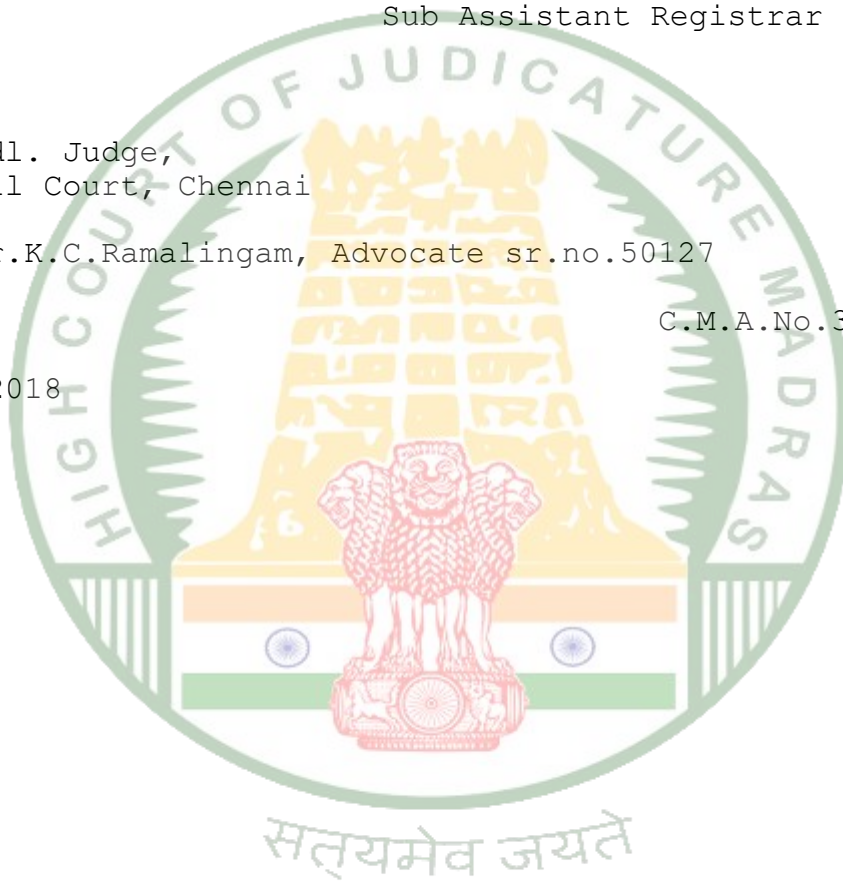
To

The I Addl. Judge,
City Civil Court, Chennai

+1cc to Mr.K.C.Ramalingam, Advocate sr.no.50127

C.M.A.No.3586 of 2010

nr 10/08/2018



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