THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.740 of 2007

JUDGMENT:

Deputy Director, E.S.I. Corporation, Hyderabad, aggrieved by the orders of the Presiding Officer, Labour Court, Guntur in E.S.I.No.28 of 1999 dated 13.12.2006, preferred this appeal.

2. The contention of the appellant is that the respondent being the employer is under obligation to pay the contributions from 1.12.1998 as the exemption granted to the respondent establishment was over by 30.11.1998. The respondent has to pay contributions from 1.12.1998 to a tune of Rs.41,828/- for the period from 1.12.1998 to 31.3.1999 for 45 employees. It is further contended that the exemption under the Employees' State Insurance Act, 1948 (for short 'the Act') is only for one year and no further exemption can be absolute and forever. Per contra, the contention of the respondent is that the Government exempted the respondent from payment of contribution from 1.12.1998 to 30.11.1999 as seen from Ex.P.1-notification and therefore, there is no merit in the contention of the learned counsel for the appellant.

3. Heard the learned counsel for the appellant and counsel for the respondent. Perused the material available on record.

4. Now the point that arises for consideration is:-

"whether the respondent is duly exempted from payment of contribution as required under Section 87 and 91-A of the Act?"

As seen from the record, Ch.V. Rajaratnam, who is one of the partners of the respondent establishment was examined as P.W.1 besides marking Exs.P.1 to P.7. P.W.1 deposed that the respondent establishment is carrying on business in redrying, un-manufactured tobacco leaf, which is a seasonal factory. The establishment is a seasonal and the activity concludes every year within 5 or 6 months. In the month of November, 1997 the Regional Director issued show cause notice under Ex.P.1 to the respondent herein for coverage of the establishment under the provisions of the Act calculating the amount towards contribution at Rs.6,43,500/- out of which, the respondent's contribution for the period from 1.12.1998 to 31.3.1999 for about 45 workers is Rs.41,828/-. Thereafter the respondent herein applied to the Government seeking exemption from the purview of provisions of the Employees' State Insurance Act and after investigation, the Government exempted the tobacco re-drying establishments from the preview of the provisions of the Act retrospectively, under Section 87 and 91-A of the Act, which was valid up to 30.11.1998. Thereafter the appellant issued a notice dated 24.7.1999 directing the respondent herein to attend on 30.8.1999 to explain as to why assessment should not be made. For the said notice, the respondent issued a reply on 14.8.1999 under Ex.P.2 stating that after expiry of the initial period of exemption, the respondent has made an application to the Government dated 3.9.1998 through Indian Tobacco Association, Guntur, to the Minister for Labour, Government of Andhra Pradesh, Hyderabad for renewing exemption for further period.

5. A reading of Ex.P.4 notification dated 3.12.1997 goes to suggest that the Governor of Andhra Pradesh exempted the factories/establishments in the State of Andhra Pradesh engaged in the seasonal processing re-drying un-manufactured leaf tobacco or processes incidental and connected with are exempted retrospectively under Section 87 and 91-A from the provisions of E.S.I. Act and prospectively, upto 30.11.1998.

6. As seen from Ex.P.5 i.e. G.O.Rt. dated 24.12.1999, the said factories/establishments engaged in the seasonal processing redrying un-manufactured leaf tobacco are further exempted from 01.12.1998. Therefore, a reading of Ex.P.5 clearly shows that the respondent's establishment was further exempted from the purview of the provisions of the Act from 1.12.1998 for which period, show cause notice was issued calling upon the respondent herein to pay the arrears.

7. The contention of the counsel for the appellant is that the said extension is in contravention of Section 87 of the Act. But, a reading of Section 87 goes to suggest that the Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time, provided, that such exceptions may be granted only if the employees in such factories or establishments are otherwise in

receipt of benefits substantially similar or superior to the benefits provided under the Act.

8. During the cross-examination, P.W.1 admitted that initially, the exemption was granted till 30.11.1998. As per Ex.P.3, the coverage period is from 1.12.1998 to 31.3.1998. He denied the suggestion that the respondent is doing the trade throughout the year and that they are purchasing the tobacco in bulk from the farmers and doing trade activity throughout the year.

9. The Superintendent, Sub-Regional Office, E.S.I. Corporation, Vijayawada is examined as R.W.1. In the examination-in-chief itself he deposed that the factory was engaged in redrying of tobacco and electrical power was also being used in the manufacturing process and at the time of inspection, 53 employees were working in the factory and the employer (respondent) has furnished all the details of his factory in Form.01. Since the respondent employed 45 employees as per Form.01, R.W.1 prepared the inspection report in Form C.10 marked as Ex.R.1 and submitted to the Regional Office along with Ex.R.2 Form.01. Later R.W.1 received copy of Ex.R.3 form-C.11, which is the provisional coverage intimation to the employer dated 14.11.1997.

10. As already observed above, in view of Section 87 of the Act, the Government is empowered to exempt a factory/establishment only for a period of one year at a time. Accordingly, initially, the respondent establishment was extended time under Ex.P.4 till 30.11.1998 and again it was extended with effect from 1.12.1998 as per Ex.P.5. There is nothing ultra vires of Section 87 of the Act.

11. The Presiding Officer taking into consideration Exs.P.4 and P.5 rightly came to the conclusion that there is exemption to the respondent establishment from the purview of the provisions of the Act upto 30.11.1999 and thereafter it was further extended with effect from 1.12.1999. The show-cause notice is for the period from 1.12.1998 to 30.11.1999, which is covered by Ex.P.5 notification.

12. In such circumstances, I am of the considered view that the Presiding Officer rightly held that the respondent herein is not liable to pay E.S.I. contributions pursuant to the show-cause notice dated 7.9.1999. I do not find any error or irregularity in the impugned order passed by the Presiding Officer and the same is in accordance with law. The impugned order does not suffer with any infirmity warranting interference.

13. In the result, the C.M.A. is dismissed while confirming the order dated 13.12.2006 passed by the Presiding Officer, Labour Court, Guntur in E.S.I. No.28 of 1999. No costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

21st March 2018
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