

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2203 of 2012

and

M.P.No.1 of 2012

M/s.Sakthi Priya Blue Metals,
Trisoolam, Chennai 600 043,
on its behalf its Proprietor

... Appellant

vs

1.The Deputy Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai 600 034.

2.The Recovery Officer,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai 600 034.

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948, to set aside the order passed by the Employees State Insurance Court in E.S.I.O.P.No.109 of 2004 dated 24.02.2011 in confirming the order passed by the Employees State Insurance Corporation in TN/INS/VIII/51/57925-43 dated 01.07.2003.

For Appellant : Mr.D.Govinda Reddy

For Respondents: Mr.K.Prabhakar

J U D G M E N T

The appellant a Crushing Unit which was subject to an inspection on 01.11.1993 by the inspector of the respondent. At that time about 15 to 20 employees were noticed by him who were working in the unit. After the second inspection on 19.06.1996, a spot letter was issued to the appellant by the said officer. The officer came to a conclusion that 20 employees were found working with the appellant and therefore, the appellant was required obtain ESI Registration with effect from 08.02.1994.

2. Since the appellant did not obtain registration, a show cause notice was issued on 17.04.2001 to the appellant. However, it was issued in the name of 'Bakthi Priya Blue Metals', Thirusoolam though it was corrected addressed to the appellant M/s. 'Sakthi Priya Blue Metals' represented by T.K.Danasekaran.

3. Taking advantage of this mistake it appears that the appellant had not replied to the show cause notice which culminated in an exparte order dated 01.07.2003 in the name of M/s.Bakthi Priya Blue Metals.

4. By the aforesaid order, the appellant unit was directed to pay a sum of Rs.2,08,581/- for the period commencing from 01.11.1993 to 30.09.2000. Later a corrigendum letter was issued by the Regional Director of ESI Corporation stating that the word of "Bakthi" in the Show Cause Notice and in the order issued on 01.07.2003 demanding a sum of Rs.2,08,581/- under Section 45-A of the ESI Act should be read as Sakthi Priya Bule Metals.

5. Thereafter, several orders came to be passed including the order of attachment restraining the appellant from selling any immovable property.

6. Aggrieved by the same, the appellant preferred an O.P under Section 75 of the ESI Act before the lower Court functioning as ESI Court vide E.S.I.O.P.No.109 of 2004. The said petition was dismissed on 24.02.2011 by the lower Court functioning as ESI Court. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

7. Heard the learned counsels for the appellant and 1st respondent namely Deputy Director of Employees State Insurance Corporation, Chennai and the 2nd respondent.

8. In the E.S.I.O.P.No.109 of 2004 filed before the lower Court at Chennai under Section 75 of the ESI Act, 1923, the appellant had admitted that the appellant concern was earlier a partnership concern vide deed of release by retirement of partner consisting of 4 partners and after retirement of the other partners on 07.09.2002, it became a proprietary concern all other partners had retired.

9. The appellant has also admitted in the deed of release by retirement of a partner that the appellant's unit was engaged in stone crushing of blue metals with 4 partners under the name of style of "Sakthi Priya Blue Metals". In the present appeal, the learned counsel for the appellant sought to down play the facts noted in the spot inspection and records stating that the appellant had neither engaged more than required number of workmen nor received notice and

therefore was out-side the purview of the ESI Act and that the appellant was engaged only trading of the blue metals. This is not permissible as it is contrary to the admission in the release deed.

10. Normally finding of facts arrived by the authority acting under the Act cannot be disturbed. However, in the facts of the case, both the show cause notice dated 17.04.2001 and the order dated 01.07.2003 have been issued in the name of "Bakthi Priya Blue Metals" but have been corrected only subsequently vide corrigendum on 12.09.2003. This was fatal to confirmation of demand. The appellant has a technical advantage on account of this even though the show cause notice and the orders may have been addressed correctly to the appellant and received by the appellant though in the wrong name viz. "Bakthi Priya Blue Metals".

11. Therefore, to meet the ends of justice, I am of the view that the show cause notice dated 17.04.2001 sent to the appellant 'Sakthi Priya Blue Metals' but typed in the name of 'Bakthi Priya Blue Metals' shall be treated as having received by the appellant with the aforesaid correction. The said show cause notice shall be adjudicated after by providing an opportunity to the appellant to file of reply within a period of 30 days from the date of receipt of a copy of this order, since the appellant has not replied to the show cause notice.

12. On filing such reply within a period of 30 days from the date of receipt of a copy of this order, the order passed under Section 45-A of the ESI Act by the Deputy Director of Employees State Insurance Corporation and the subsequent order of the lower Court functioning as ESI Court shall stand set aside.

13. It is however made clear all attachment orders made so far shall not be disturbed and will be subject to further outcome in the denovo proceedings. The Deputy/Regional Director of ESI Corporation is requested to pass a fresh order within a period of 30 days from of receipt of a reply from the appellant to the show cause notice. Needless to state, the appellant shall also be heard before final orders are passed.

14. The present Civil Miscellaneous Appeal is disposed with the above observations. No cost. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Employees State Insurance Court,
(Principal Labour Court)
Chennai.

2.The Deputy Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai 600 034.

3.The Recovery Officer,
Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai 600 034.

4.The Section Officer,
V.R. Section, Madras High Court.

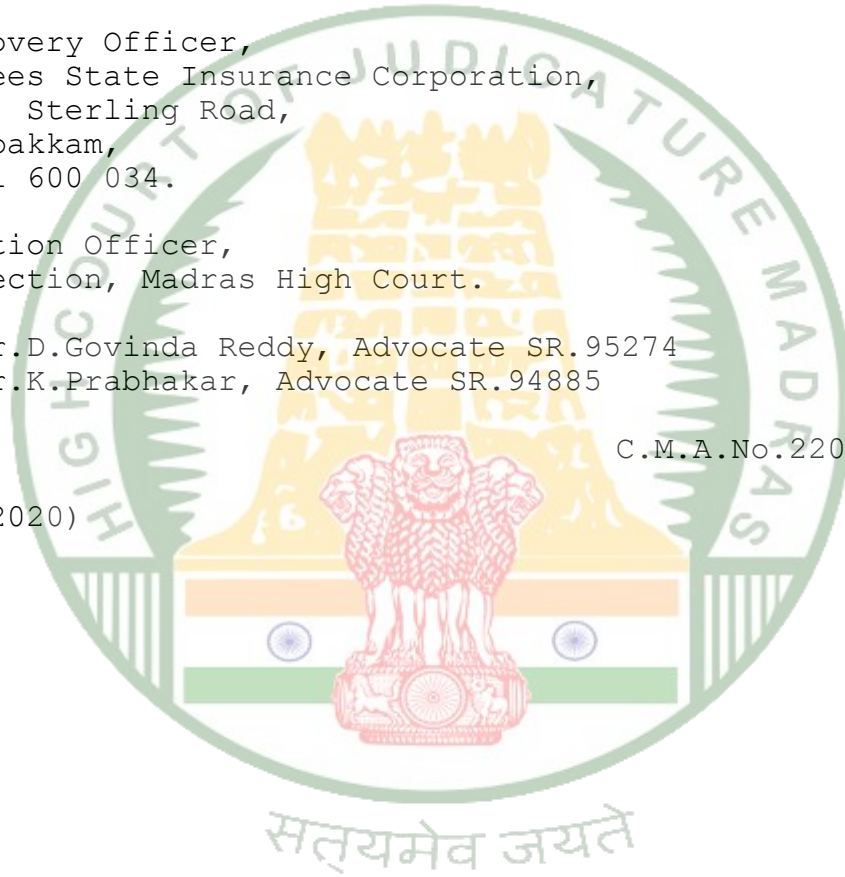
+lcc to Mr.D.Govinda Reddy, Advocate SR.95274

+lcc to Mr.K.Prabhakar, Advocate SR.94885

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PP(CO)

CB(28/01/2020)



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