IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1344 of 2013

1. The Assistant Director,
Employees State Insurance Corporation,
Regional Office,
143, Sterling Rod, Chennai - 34.

2. The Insurance Inspector,
Employees State Insurance Corporation,
ESI Buildings, Pidari Kulam Road,
Kumbakonam.

.. Appellants/ Respondents

Vs.

P.A.Shettu,
Proprietor,
M/s.Kaveri Collections (P) Ltd.,
126, Gandhiji Road, Thanjavur - 613 001.

.. Respondent/ Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 82 (2) of E.S.I Act, against the order passed in ESIOP.No.42 of 2003, by the Employees State Insurance Court cum Principal District Judge, Thanjavur, dated 09.11.2012.

For Appellant : M/s.F.Narmadha for Mr.G.Bharadwaj

For Respondents : M/s.J.Antony Jesus

J U D G M E N T

The appellants herein are the respondents in ESIOP.No.42 of 2003 filed by the respondent herein to declare that his business has not been covered under ESI Act and to set aside the order bearing No.II/51-74040-19, dated 28.02.2003 passed by the 1st appellant claiming contribution as required under ESI Act

2. The ESI Corporation also submits its objection. On hearing both sides, the Principal District Judge/ESI Court, Tanjavur, allowed the petition by setting aside the order passed

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by the first appellant. Aggrieved by that, the appellants preferred this appeal.

3. The learned counsel for the appellants submits that ESI Court failed to see that if the number of employees exceeds 10 and manufacturing process with aid of power is carried on in the premises, it will be termed as factory as defined under Section 2(12) of ESI Act. Without appreciating the evidence, the ESI Court erroneously conclude that there is no manufacturing process in the petitioner's premises and set aside the order passed by the first appellant. Hence, he prays to allow this appeal.

4. Point for consideration:

(i) Whether the ESI Court erroneously concluded that alteration made with the stitching machine and using iron box in the business of readymade garments will not amount to ''manufacturing process'' as contemplated under Section 2(12) of ESI Act?;

(ii) Whether the ESI Court failed to appreciate that more than 10 employees were employed in the premises which is sufficient to conclude that petitioner shop coming under purview of Section (2) of the Factories Act.

5. The brief facts of the case as follows:

The respondent is the proprietor of M/s.Kaveri Collections Private Limited, Thanjavur and a Franchise of Raymond Textile and having show room and the business run altogether and there are only 11 employees. The respondent is a retail sale agency exclusively dealing in readymade garments and textiles manufactured and supplied by the Raymond Mill Company. The respondent has never employed more than 11 persons for the purpose of his business and Inspectors of the Labour Department, periodically visited and inspect their premises. So, the respondent will not come under the Employees State Insurance Act, which applies to the Commercial establishment, if only 20 or more persons are employed. But the first appellant after its inspection, directed the respondent to make a contribution as he found 11 persons were employed and running the altering unit with tailoring machine and electronic iron box with the use of power. So it comes under definition of factory as well as manufacturing process is covered under Section 2 (14AA) of ESI Act, thereby, issued notice demanding contribution of Rs.41,828/-. Aggrieved by the interim order dated 28.02.2003, he filed the above petition.

6. According to the appellants, during the inspection, the attendance register from 03.07.2001 and 27.07.2001 was verified and it was found that more than 15

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employees were employed and also having an altering unit functioning in the premises with one electronic iron box and tailoring machine for altering the garments for the sales. So, the respondent is liable to pay the contribution to the employees, since the premises comes under the definition of 'factory'.

7. At the time of trial, on the side of the respondent, the owner was examined as PW.1 and Exs.P1 to P17 were marked and on the side of the appellants, RW.1 was examined . Thereafter, on merits, the ESI Court allowed the application by set aside the order passed by ESI Corporation.

8. The learned counsel for the appellants submits that the respondent selling the garments of Raymond Textiles along with altering unit functioning in his premises and employed nearly 15 persons, thereby, comes under the definition of the factory under Section 2(12) of Factories Act.

9. Per contra, the learned counsel for the respondent submits that garments alone sold in that shop and at the request of the customers garments are altered and given to them. So, they are not running any altering unit nor performing manufacturing unit, thereby, contended that the shop will not attract the definition of 'factory'.

10. By way of reply, the learned counsel relied the letter dated 27.07.2001 given by the respondent (at page No.7 of typeset) submits that the respondent themselves admitted that they are running a altering unit with one tailoring machine and an electronic iron box. The relevant portion of the letter reads as follows:

> " We have an altering unit functioning with one tailoring machine and an electronic iron box as on date, this is only a temporary arrangements."

It is settled proposition that admission is the best evidence which does not require further proof. Hence, the respondent himself accepted that he is running a altering unit in his premise.

11. At the instance, the learned counsel for the appellants relied upon the judgment reported in High Court, Andrapradesh, in the case of ESI Corporation, Vs. New Empire Tailors, wherein it has been held as follows:

> It is already seen that Cl.(1) applies when ten or more persons are employed or were employed in an establishment in which manufacturing process is carried carried on with the aid of the power. It is already held that though power was/is not used to stitch clothes or garments, yet the

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respondents, adopted to iron them with the aid of power for ornamentation or giving elegant appearance to the stitched clothes as finished product to use them and to enhance the good will of the tailoring firm. Thereby, ironing the clothes with the aid of power became an integral part of manufacturing process though to new product has emerged.

12. Based upon the said proposition, the learned counsel for the appellants submits that the respondent comes under the definition of factory and therefore they are liable to pay the contribution as required under ESI Act.

13. The learned counsel for the respondent replied that altogether less than 10 persons were employed and with the help of one iron box and with one tailoring machine, the stitched garments were altered as per the customers' request, which will not come under the definition of factory.

14. As rightly pointed out by the learned counsel for the appellants, the respondent admits by its letter dated 04.07.2002 that he is running the altering unit with iron box and tailoring machine and the same is used with the aid of power. So the premises comes under the definition of the factory as defined under Section 2 (k) of the Factories Act, which defines "manufacturing process" thus:

"(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or ....

[Clauses (ii) to (vi) are not relevant. Hence, omitted.]

Section 2(g) defines "power" thus:

"Power means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. .....

Section 2 (m) of the Factories Act, defines "Factory" thus:

Factory means any premises including the precincts thereof

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; "......

All these ingredients are squarely applicable to the respondent proprietary concern. Neverthless, the appellant proved that the respondent running a factory.

15. Furthermore, as per the register extract found (at

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page nos.1 to 4 of the typed set of papers) proves that 11 persons were employed at the time of the inspection made by the labour inspectors, so if more than 10 persons were employed it is sufficient to conclude that he is running a factory. But, ESI Court fails to appreciate this aspect and erroneously concluded that the respondent will not come under the purview of ESI Corporation Act.

16. Accordingly, this Civil Miscellaneous Appeal is allowed and the order passed by the ESI Court is set aside and both the issues are answered accordingly. The respondent is liable to pay the contribution as required in the notice dated 28.02.2003. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To,

1.The Principal District Judge,
Employees State Insurance Court,
Thanjavur.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.G.Bharadwaj, Advocate SR.No. 9277

A.SK(16.03.2021)
A.SK(29.03.2021)

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