IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.985 of 2020
and
C.M.P.No.6202 of 2020

Gowri Menswear and Readymade
Represented by its Partner S.Raj Kamal,
105, Gandhi Road,
Kancheepuram – 631 501 ..Appellant

Vs.

Deputy Director,
Employees" State Insurance Corporation,
143, Sterling Road,
Nungambakkam, Chennai – 600 034. ..Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82(3) of the Employees' State Insurance Act, to set aside the order and decree in EIOP.No.57 of 2013 dated 01.03.2019 on the file of the Employees Insurance Court(Principal Labour Court), Chennai.

For Appellant	:	Mr.Haroon AL.Rasheed For M/s.T.S.Gopalan and Co
For Respondent	:	Mr.G.Bharadwaj

JUDGMENT

The Civil Miscellaneous Appeal on hand is preferred against the order dated 01.03.2019 passed in EIOP.No.57 of 2013.

2. The Substantial question of law raised by the appellant reads as under:

> *"1. Whether the order under Section 45A passed without affording reasonable opportunity to the petitioner is sustainable in the light of the judgment of this Hon'ble Court reported in 2004-II-LLN-1071.*
>
> *2. Whether the ESI Court was justified in holding that there was functional integrality in the family business of Appellant contrary to the law laid down by the Hon'ble Supreme Court reported in 2007-4-SCC-239.*
>
> *3. Whether the demand under Section 45A on the basis of assumed wages is sustainable and in consonance with the provisions of the ESI Act."*

3. Though the questions of law are relatable to factual matrix, the learned counsel for the appellant reiterated that no opportunity was granted to the appellant to defend their case properly. It is further contended that the respondent Corporation tagged five different establishments and made a common assessment for determination of

contribution payable. Such an exercise done is improper as five establishments are independent and separate. This apart, it is contended that the monthly salary of the workmen were also erroneously calculated and no opportunity was provided to the appellant, to produce the correct particulars in this regard.

4. The ESI Court also failed to adjudicate these details. Therefore, the matter is to be remanded back or the order is to be set aside.

5. The learned counsel appearing on behalf of the respondent/ESI Corporation strenuously opposed the contention by stating that the appellants have suppressed the fact before the Inspection authorities regarding the different Unit functioning under the same Management. Even as per their own challan particulars of contribution made, they have signed as Gowri Meanswear and Readymade. However, the assessment was made for five establishments falling under the same management. The said factum was not in dispute and the statement was submitted by the appellants themselves before the authorities, which were marked as a document before the ESI Court as RW1 along with the

preliminary inspection report. The appellants have produced the documents during the earlier assessment period and those documents reveals that all the five establishments are one and the same.

6. The contention of the respondent is that the said contribution was paid for the period from the year 2006 to 2009 and the said Challan particulars of contribution made reveals that the assessment was made for five units and the said challan was signed by the authorized Signatory of Gowri Menswear and Readymade. Relying on the said documents filed by the appellants themselves, the learned counsel for the respondent Corporation reiterated that they have paid a contribution for the year 2006 to 2009, now disputing the contribution for the year 2009 to 2011 and 2011 to 2012 on the ground that these five establishments are independent. Once they have filed Challan particulars commonly for all the five establishments and the authorised signatory was also one and the same for the Assessment Year 2006 to 2009 as per the challan particulars filed by the appellant themselves, there is no reason to take a different view by the appellant themselves. In fact new materials were not furnished by the appellants to take a different view in

respect of the Management of five establishments. The 45-A order dated 22.08.2013 reveals that the Show Cause Notice was sent by Registered post with acknowledgment due, had been received by the employer as per the postal acknowledgment, which kept on record. The employers have afforded an opportunity of personal hearing on 10.05.2013 to present their case in person with relevant documents and to raise objection if any. But the employer had neither replied to the notice nor appeared before the competent authority on 10.05.2013 on the basis of natural justice one more Personal Hearing was given on 21.06.2013. The employer Sri.S.Rajkamal appeared for personal hearing on 21.06.2013. However, the employer has produced only the records of Gowri Mens Wear and it is observed that on going through the records, the Employer has got in the name and style of the following units:

a) Dharma Textiles

b) Gowri Mens Wear

c) Gowri Life Style

d) Shethel Tex

e) Gowri Taya Maliga

7. When the employer failed to produce the details of other units,

the authorities have verified the earlier assessment as well as the challan particulars filed by the appellants for the year 2006 to 2009 and arrived a conclusion that the 5 units are functioning under the same establishment and therefore, a common assessment is to be made with reference to the 43 employees. Regarding the monthly income of the workmen, the assessment of the year 2006 to 2009 was taken into consideration and applying the principles of 55 % of wage ceiling limit, the income was fixed and accordingly, the contribution payable was determined. Therefore, the contention that the ESI Court has not relied upon any document is incorrect. The ESI Court relied on the preliminary inspection report of respondent's Social Security officer dated 07.08.2006 marked as Ex.R1, which contains the challan particulars of contributions made for the Assessment Year 2006-2009. Ex.R2 dated 18.09.2006 is Copy of Code Number allotment letter Form C-11 sent by the Corporation to the appellant Company. The ESI Court has considered these documents and formed an opinion that when there is functional integrality and the units are existing in single premises and the owners are closely relatives, such clubbings are permissible. Various factors is also considered by the ESI Court with reference to the judgment of the Hon'ble Supreme Court of India in the case of Associated Cement companies Limited Vs. Their Workmen Functional. It was made clear that the clubbing of establishments for assessment of ESI Contribution can be made on showing the fact of functional integrality and therefore, the ESI Court held that there is no absolute necessity that the owners of the establishment shall be same and it can be one of the factors of clubbing the establishment. When there is a functional integrality having the same Door Number and they have complied with in a single code from the year 2006 and by making an unsupported claim that the stamps were given for affixing in the report by a small boy, the ESI Court could able to find that the new stand is taken by the appellant to avoid only payment of ESI Contribution. The appellant also has not filed any document to establish that the units were separate and unconnected. Contrarily, the preliminary inspection report marked as R1 reveals that these units are functioning in the same premises and the earlier contribution paid by the appellant also reveals that under the same Code, the contribution was paid for five units and the authorized signatory signed the said challan on behalf of the 5 units and the seal affixed reveal that Gowri Menswear and Readymade.

8. The particulars states that the contribution was made for five units. All these aspects were considered by the ESI Court and it was evident from RW1 that the entire unit was owned by the father of the appellant and now owned by the appellants and his brothers and the shops were also having similar business in the nature of having Single code Number. They have not produced any partnership documents or other documents to establish that the units were unconnected. In the absence of any such document, the authorities have proceeded on the basis of the earlier contribution made jointly on behalf of five units by Gowri Menswear and Readymade and accordingly, the assessed the income of the workmen and determined the contribution payable and passed an order under Section 45A of the Act by affording opportunity to the appellants, which revealed through documents and the ESI Court also considered all those documents.

9. This being the categorical finding of the ESI Court and Section 45A order also is a considered order, this Court do not find any perversity or infirmity in respect of the findings arrived by the ESI Court

with reference to the determination and contribution payable under the ESI Act. Thus, the appellant could not able to establish any acceptable substantial question of law or factual discrepancies, enabling this Court to consider any further.

10. Thus, the order dated 01.03.2019 passed in EIOP.No.57 of 2013 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.985 of 2020 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.03.2021
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Index: Yes/No
Internet:Yes/No
Speaking order/Non-Speaking Order

To
The Employees Insurance Court,
(Principal Labour Court), Chennai.

S.M.SUBRAMANIAM, J.

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