

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 2087 of 2016

M/s.Sivagami Blue Metal,
Trisulam, Chennai - 600 045
Rep. By its Proprietor

..Appellant/Petitioner

Vs

Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600 034.
Rep. By the Assistant Director

..Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1982 against the fair and decreetal order dated 28.07.2016 passed in E.I.O.P.No. 13 of 2012 on the file of the Employees State Insurance Court, (Principal Labour Court), Chennai.

For Appellant : Mr.C.Manohar Gupta
for M/s.Gupta and Ravi

For Respondent : Mr.K.Prabakar

JUDGMENT

The order dated 28.07.2016 passed in EIOP No. 13 of 2012 is under challenge in the present civil miscellaneous appeal.

2. The substantial questions of law raised by the appellant read as under:

- "(a) Whether the Appellant is liable to cover its employees under the provision of the ESI Act even though the appellant has not engaged 10 persons at any point of time and therefore the provisions of ESI Act does not apply?
- (b) Whether the Appellant is liable to be covered under the provisions of the ESI Act

even though the appellant does not satisfy the definition term factory as defined under Section 2(12) of the Factories Act?

(c) Whether there is a violation of principle of natural justice in passing the order under Section 45A of the ESI Act on remand as no proper notice was served on the Appellant by the ESI authorities?"

3. As far as the first substantial question of law is concerned, the same is relatable to the facts and circumstances of the case.

4. Learned counsel for the appellant mainly contended that no opportunity was being provided to the petitioner and, therefore, the principles of natural justice has been violated. When the parties have neither verified the document nor provided an opportunity then the order is liable to be scrapped.

5. The appellant has stated that he has never employed more than four persons for wages and therefore, there cannot be any coverage. However, the ESI Court, considered these aspects and Ex.P3 order was passed under Section 45A of the ESI Act on 27.06.2003/10.07.2003 were set aside and order with a direction to give copy of the inspection report to the petitioner, issue fresh C.18 notice and pass orders under Section 45A of the Act after giving the petitioner opportunity of hearing. Thus, the appellant again says that no opportunity was provided to them. The ESI Court also categorically considered the documents as well as the opportunity provided to the appellant to support their case.

6. The respondent/ESI Corporation has produced Exs.R1 to R9 and Ex.R1 is the copy of the personal hearing notice dated 12.01.2011, for the hearing dated 04.02.2011. Ex.R2 is the returned cover along with the acknowledgment card. Ex.R3 is the personal hearing notice dated 27.12.2011 for the hearing dated 10.01.2012. Ex.R4 is the returned cover along with acknowledgment card. Ex.R5 is also the returned cover along with acknowledgment card. Ex.R6 is the form C18 notice for the period 17.11.93 to 30.09.2000. Ex.R7 is the returned cover. Ex.R8 is the returned cover. Ex.R9 is the impugned order passed u/s.45A of the ESI Act on 05.03.2012. All these aspects were categorically considered by the ESI Court. Thus, there is no reason to consider the said substantial question of law. The next substantial question of law is inter-connected. The principles of natural justice also has been followed by providing adequate opportunity to the appellant to present their case.

7. After considering all the documents as well as the opportunities provided to the appellant, the ESI Court, made the following findings in paragraph 13, reads as under:

"13. Admittedly, the petitioner has not produced any documents to show the number of persons employed by the petitioner by producing the attendance register, wage register, day book, ledgers, cash book, vouchers, etc. before the enquiry officer. Even before this Court, the petitioner has not produced these documents to show that the petitioner had employed only 4 persons during the relevant period and therefore the petitioner is not liable to pay contribution under the Act. The petitioner has failed to avail the opportunity available to it in the enquiry before this Court to prove its case. Therefore, the order passed u/s.45A of the ESI Act with available records cannot be faulted. Though the copy of the inspection report is not filed, the non production becomes immaterial in the absence of production of the documents by the petitioner to show the number of persons employed. It is seen from Ex.R6 that contribution was claimed for the period from 11.7.93 to 30.09.2000 on the assumed wages. However, it has been wrongly typed in the impugned order that claim period was 17.11.93 to 30.12.96. This is only a typographical error and it will not dent the case of the respondent. The analysis of the evidence produced in this case clearly shows that the petitioner has failed to avail the opportunity of personal hearing given by the respondent and again failed to avail the opportunity available to him during the enquiry before this Court to show that the petitioner had employed only four persons and therefore it is not coverable under the provisions of the ESI Act. In the said circumstances, the impugned order passed on the basis of the available records cannot be faulted and it is confirmed. Therefore the prayer of the petitioner that the impugned order has to be set aside cannot be accepted. In this view of the matter, this petition is dismissed with costs of the respondent."

8. In view of the said facts and circumstances, the appellant could not be able to establish any acceptable substantial questions of law required for consideration in respect of the present appeal. Thus, the order dated 28.07.2016

passed in E.I.O.P.No. 13 of 2012 stands confirmed and the civil miscellaneous appeal is dismissed. No costs. C.M.P. No. 15211 of 2016 is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ssm

To

The Presiding Officer,
Principal Labour Court, Chennai.

+1 cc to M/s.Gupta & Ravi,Advocate SR No.15040
+1 cc to M/s.K.Prabakar,Advocate Sr No.14959

C.M.A.No. 2087 of 2016
09.03.2021

KV(CO)
RG.26/04/2021(4p/4c)