

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1060 OF 2018

AND

C.M.P.NO.8650 OF 2018

M/s.Chennai Cottons

No.2, Vijayaraghava Road
Chennai - 600 017

Rep.by its power agent
J.P.Shah

.. Appellant

Vs.

1. The Regional Director,
E.S.I.Corporation,
No.143, Sterling Road,
Chennai - 34.

2. The Authorised Officer,
E.S.I.Corporation,
No.143, Sterling Road,
Chennai - 34.

3. The Recovery Officer,
E.S.I.Corporation,
No.143, Sterling Road,
Chennai - 34.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employee's State Insurance Act, against the order and decree dated 07.04.2017 in E.I.O.P.No.95 of 2006 passed by the learned Judge, Principal Labour Court, (Employees' Insurance Court), Chennai.

For Appellant : Mr.D.Abdullah
For Respondents : Mr.S.P.Srinivasan
Standing Counsel for EST

J U D G M E N T

The order dated 07.04.2017 passed in E.I.O.P.No.95 of 2006 is under challenge in the present Civil Miscellaneous Appeal.

2. Though the appellant has raised three substantial question of law, the learned counsel for the appellant confined by stating that only question of law to be considered by this Court is that whether the trial Court erred in passing an order in a cryptic and non-speaking manner.

3. The learned counsel for the appellant made a submission that the appellant factory closed its operations from 01.11.1992 and the said factum was not considered by the authorities as well as by the ESI Court. However, closure of the establishment is a factual aspect to be considered with reference to the documents. If at all, the appellant closed the business, it is for him to establish the same by filing documents and adducing evidences. However, the ESI Court made a categorical finding that the petitioner has not proved the fact that factory was closed its operation on 01.11.1992 in a satisfactory manner. In the absence of any proof to establish the closure, the ESI Court is right in not considering the case of the appellant. In respect of closure of business, more specifically, when the business is covered under the ESI Act, is to be established through an acceptable evidence. A mere statement in this regard is insufficient to arrive a conclusion. The findings of the ESI Court reveals that the appellant did not intimate the respondent/Corporation about the closure of business or changes in the number of workmen. Even before the ESI Court also, the appellant has not established that the business was closed its operations from 01.11.1992 by producing reliable evidence Exs.P1 to P13 do not contain any evidence to show that the business of the petitioner was closed on 01.11.1992. Non-operation of Bank operation is insufficient to establish the closure of the business. The appellant has obtained a license under the Factories Act to run the factory as the factory involved in Garment Manufacture. When it was closed, then all appropriate steps are to be taken and at least before the ESI Court, the appellant would have produced some document to establish the same. However, the ESI Court, in categorical terms, held that the appellant had not produced any evidence to show that that it had obtained license or to show that it has surrendered after October 1992. Thus, the ESI Court could not able to arrive a conclusion that the appellant company closed its operations on 01.11.1992. The findings in this regard are unambiguous and the same are extracted hereunder:

"6.....The petitioner admittedly was engaged in manufacture of garments and therefore, it is clear that it was a factory. The petitioner must have obtained a license under the Factories Act to run the factory. If it was closed, the license must have been surrendered to the officer concerned. The petitioner must have been registered with other Government

authorities also and the registration must have canceled when the operations were closed. But the petitioner has not produced any evidence to show that it had obtained license or to show that it has surrendered after October 1992. It has not produced any evidence to show that its registration was also cancelled. The petitioner has not produced any evidence to show that the partnership firm was dissolved on or immediately after 01.11.1992. The attendance registers and wage registers are the serving documents of the petitioner and merely on the basis of the absence of entries in these registers, I cannot come to the conclusion that the petitioner must have closed its operations from 01.11.1992. The petitioner has conveniently stated that it has to locate the papers to find out whether the factory license was obtained and whether it was surrendered subsequently. The petitioner has not proved the fact that it has closed the operations on 01.11.1992 in a satisfactory manner. Therefore, there was nothing wrong in the respondent determining the contribution on adhoc basis. The petitioner has I have already stated, failed to intimate to the Corporation about the alleged closure of business or the alleged fact that there were no employees from 01.11.1992. Having failed to abide by the law, the petitioner cannot now complain that the respondent passed the order arbitrarily. There is no satisfactory evidence to come to the conclusion that the petitioner closed its operation on 01.11.1992 itself and therefore, I come to the conclusion that the impugned order is legally sustainable. These issues are answered accordingly."

4. In view of the above finding, this Court is of the opinion that the appellant has not raised any acceptable substantial question of law, warranting further adjudication on merits and therefore, the order dated 07.04.2017 passed in E.I.O.P.No.95 of 2006 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.1060 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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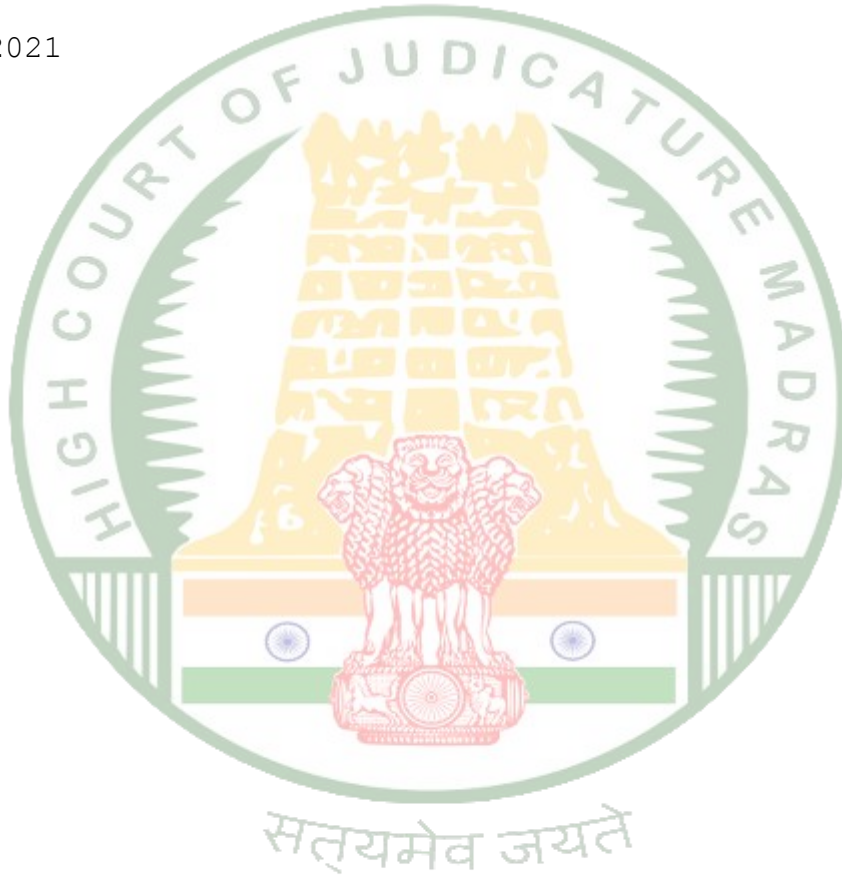
To

The learned Judge,
Principal Labour Court,
(Employees' Insurance Court), Chennai.

+1cc to M/s.S.P.Srinivasan, Advocate, S.R.No.15105
+1cc to M/s.D.Abdullah, Advocate, S.R.No.15630

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AND
C.M.P.NO.8650 OF 2018

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