

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1565 of 2018
and
C.M.P.No.12400 of 2018

Assistant Regional Director,
ESI Corporation,
39/57, Three Roads,
Salem - 636 009.

..Appellant

Vs.

1.Premier Match Industries,
Rep.by its Proprietor,
J.P.Asmath Narayanan,
59R, Bye Pass Road,
Dharmapuri - 636 701.

.1st Respondent/ Petitioner

2.G.Padmanabhan

..2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, against the order passed in EIOP.No.4 of 2013 dated 19.12.2017, on the file of the Employees Insurance Court (Labour Court, Salem), Salem.

For Appellant : Mr.SP.Srinivasan

For Respondents : R1 - Mr.M.R.Raghavan
R2 - No appearance

J U D G M E N T

The order and judgment dated 19.12.2017 passed in E.I.O.P.No.4 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The Substantial Question of law mainly raised by the appellant is that whether the employees engaged by Senthil Scoring Industries and Priya Slitters are the employees of Respondent under ESI Act and whether they fall within the definition of "employees" as defined under Section 2(9) of the ESI Act.

3. Section 2(9) of the ESI Act defines "Employee". In order to establish, records must be available. The officials of the appellant Corporation conducted an inspection of the records of the factory on 23.10.2007. The Inspector, who

conducted the inspection though directed the Management of the company to produce records, the learned counsel for the appellant states that they have not produced any records. Therefore, they have verified the Attendance, Wage Register, Books of Accounts and arrived a conclusion that the two companies are one and the same. The two companies are administered by the family members and accordingly, assessed the liability and fixed the contribution to be payable.

4. The learned counsel for the appellant made a submission that the Appellate Court has not considered any of these aspects, the appellant could able to establish through Ex.A18 and relied on the deposition of P.W.2 and P.W.1. Relying on the said evidences, it is contended that the Appellate Court failed to consider the deposition as well as the documents.

5. The learned counsel appearing on behalf of the respondent company mainly contended that no documents are relied on by the appellant Corporation officials to establish that the two companies are one and the same. Though the two companies are different and distinct, the Directors of the Companies are relatives. It is an admitted fact that the units are separate and the two units are functioning separately. The appellant and terms of services are also different. However, those factors were not established with reference to the records available. When two companies are distinct and different, it is to be established with records that the Management is one and the same. However, merely on the basis that the Directors are the relatives, the Appellant Corporation arrived a conclusion that the Management is one and the same. Even in cases, where some of the relatives are Directors, the Management may be different and in the present case, the units are functioning separately. Therefore, there must be sufficient records to establish that all the employees are appointed and working under the same Management. However, the appellant could not able to establish such factor before the Court and perusal of the order passed under Section 45-A also reveals that there is no materials to establish the same.

6. In view of the fact that the units are functioning separately, that does not indicate that the Management is one and the same. As per the respondent, one unit is no way connected with other unit and mere fact that the Directors are relatives, are insufficient to arrive a conclusion that the ESI Contribution to be paid jointly.

7. In view of the fact that the order passed under Section 45-A of the Act is silent, the Appellate Court adjudicated these issues with reference to the documents and evidences produced. The findings of the Appellate Court reads as under:

"20.....consideration of facts and pleadings and other material evidence in this case

this Court is of the view that the impugned order only states about the 'distant' of the 1st respondent has not explained the meaning for this word 'distant'. But the contention of the petitioners that those 10 outside firms were considered not coming under the supervision control of the petitioner industry only on the ground of 'distant' virtually the meaning given by the petitioner is those 10 firms were excluded on the ground of the distance which is also not disputed by the 1st respondent. However, the two firms namely Senthil Scoring Firm and Priya Slitters were brought within the purview of the petitioner's industry on the ground of close proximity situated within the small distance. It is not the object or purport of the ESI Act nor any notification, circular makes it mandatory to the 1st respondent to bring those outside firms if they are doing job works which are situated near to the principal employer is to be treated as immediate employer. Hence the impugned order is vague and it is not based upon material evidence and no acceptable reason was given by the 1st respondent for not excluding these two firms as they are allegedly not distant companies. Therefore in fine the 1st respondent before passing orders has not found the Senthil Scoring firm and Priya Slitters firm are situated within the premises of the petitioner factory nor considered the fact about the real employer, nor passed the order after satisfying the ingredients of employer and employee relationship but merely passed the order on the ground that those two firms are just situated near to the petitioner company. Hence the petitioner cannot be considered as a principal employer nor immediate employer in respect of Senthil Scoring firm and Priya Slitters firm. Hence they are independent outside firms with separate registration certificates and having permanent income tax account number. Hence amount paid to them will not come under the purview of wages. Hence Points No.1 and 2 answered accordingly."

8. This Court do not find any perversity as such in respect of the findings of the Appellate Court as the appellant / officials could not able to establish or substantiate the reasons cited in the 45A order and the 45A order did not contain the materials or the informations for the purpose of imposing contribution in the manner done by the authorities. Thus, the order and judgment dated 19.12.2017 passed in E.I.O.P.No.4 of 2013 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.1565 of 2018 is dismissed. However, the authorities of the appellant / Corporation is at

liberty to conduct fresh inspection and if the materials are available, then they are empowered to proceed in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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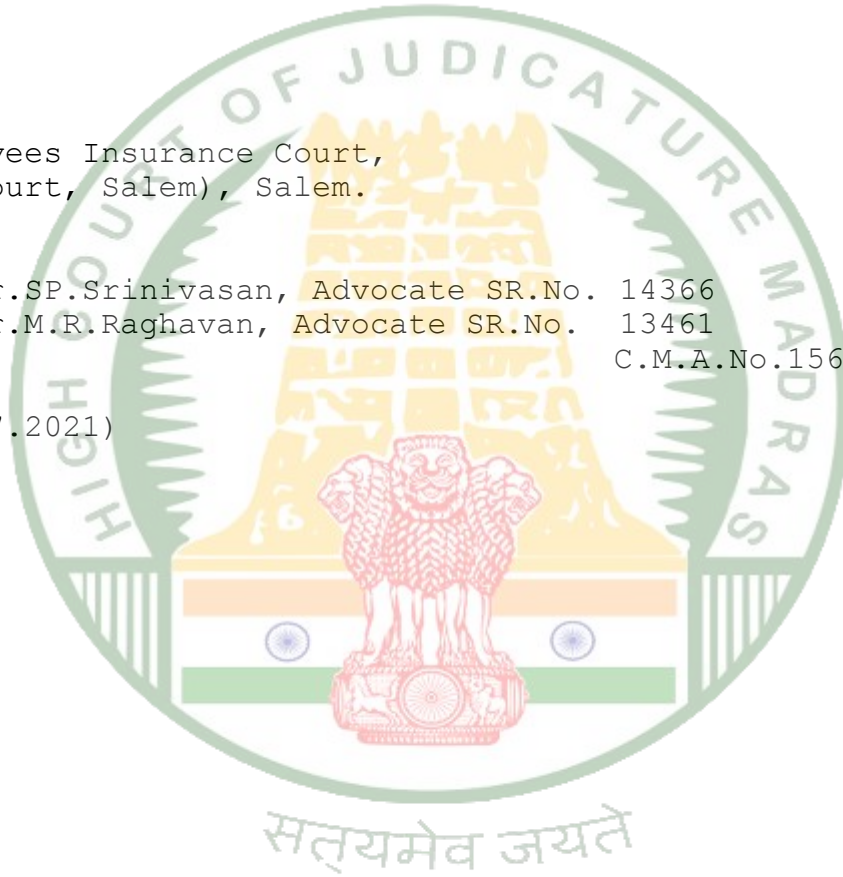
The Employees Insurance Court,
(Labour Court, Salem), Salem.

+1cc to Mr.SP.Srinivasan, Advocate SR.No. 14366

+1cc to Mr.M.R.Raghavan, Advocate SR.No. 13461

C.M.A.No.1565 of 2018

ssm co
A.SK(01.07.2021)



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