IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 3332 of 2014

Employees State Insurance Corporation,
By its Regional Director,
No.143, Sterling Road,
Nungambakkam,
Madras - 600 034. ..Appellant/Respondent

Vs

M/s. Brakes India Limited,
Padi, Madras,
Rep. By its Vice President (Personnel).
..Respondent/Petitioner

Appeal filed under Section 82 of the Employees State Insurance Act, 1948 against the order of the Employees Insurance Court (Principal Labour Court) Chennai in EI OP No. 355 of 2001 dated 21.08.2012.

For Appellant : Mr.G.Bharadwaj

For Respondent : Mr.N.Balasubramanian

JUDGMENT

The order dated 21.08.2012 passed in O.P.No.355 of 2001 is under challenge in the present civil miscellaneous appeal.

2. The substantial questions of law raised in the appeal on hand are that : (1) Whether the findings of the trial court in holding that the labour charges incurred for maintenance and repair of buildings situated outside the premises would not attract the coverage of E.S.I. Act is legal? and (2) Whether it is legally correct that the labour charges incurred for maintenance and repair of buildings within the premises would attract application of E.S.I Act but the same cannot be extended to the building outside the premises when such buildings are also utilised for the promotion of the business of the organization?

3. Learned counsel for the appellant made a submission that the appeal itself is filed for restricted purposes regarding the exemptions granted by the ESI Court in respect of Item Nos. 11 to 14. In this regard, it is contended that the guest house maintained by the principal employer for the benefit of the officials are in the factory and cannot be separated from establishing the guest house maintained is also a part and parcel of the establishment and, therefore, the repair and maintenance work done in the guest house is also to be included for the purpose of assessment and fixing the contribution. Secondly, the casual salary of the last-graded employees at the Delhi office is also to be included in view of the definition contained in Section 2(9) of the ESI Act.

4. Relying on Section 2(9) of the ESI Act, the learned counsel for the appellant reiterated that 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies. Sub-clause (ii) stipulates that an employee who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of factory or establishment.

5. This Court is of the considered opinion that Section 2(9)(ii) provides wider scope for inclusion of casual employees engaged by the principal employer for maintenance or for other works. The guest house also to be considered as a part of establishment as it is utilized for the welfare of the officials and other guests who were attending the factory works. Thus, the guest house or the casual labourers working in the Delhi office cannot be exempted as the same will fall within the purview of Section 2(9) of the ESI Act. When a proper meaning is provided so as to include of such act incidental thereto and with reference to the maintenance of the guest house or other officers suitable in various other places, this Court is of the opinion that the ESI Court has committed an error in considering the scope of Section 2(9) of the ESI Act.

6. When the scope of Section 2(9) of the ESI Act is wider so as to cover the guest house and the casual employers employed in other offices and in the present case at Delhi, there is no reason to grant any exemption from the assessment already made with reference to the contribution payable. This being the factum, this Court is of the considered opinion that the exemption granted by the ESI Court is perverse and is not in tune with Section 2(9) of the Act.

7. Accordingly, the judgment dated 21.08.2012 passed in E.I.O.P.No. 355 of 2001 is set aside and the order passed under Section 45A of the Act stands confirmed and consequently the civil miscellaneous appeal is allowed. No costs. Connected, M.P.No. 1 of 2014 closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Presiding Officer,
Principal Labour Court,
Chennai.

+1cc to M/s.Bharadwaj, Advocate, S.R.No.15115

C.M.A.No. 3332 of 2014

VSN-II(CO)
RGA(09/08/2021)