

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.490 of 2014
and M.P.No.1 of 2014

The Pondicherry Co-operative Wholesale Stores Ltd.,
No.P.44, Rep. by its Managing Director,
Mr.T.Chanemougam,
288, Mahatma Gandhi Road,
Puducherry - 605 001.

(Cause title accepted vide order of Court dated 10.01.2014
made in M.P.No.1 of 2014 in CMA.SR.No.103371 of 2013)

.. Appellant/Claimant

Vs.

The Regional Director,
Employees State Insurance Corporation,
ESI Complex,
Bouvankare Street,
Mudaliarpet, Pondicherry. .. Respondent/respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 82
(2) of E.S.I Act, 1948, against the order dated 29.05.2013, in
ESIOP.No.12 of 2009, on the file of the Employees Insurance
Court, Pondicherry.

For Appellant : Mr.R.Sreedhar (NA)
For Respondent : M/s.Jayakumari

J U D G M E N T

The appellant herein is the petitioner, who filed
ESIOP.No.12 of 2009, praying to declare the assessment order
dated 07.05.2009 and the recovery proceedings initiated by this
respondent/Employees State Insurance Corporation as null and
void. But ESI Court erroneously dismissed the application.
Aggrieved by that, he preferred this Civil Miscellaneous Appeal.
The Employees State Insurance Corporation contested the appeal.

2. Point for consideration:

"Whether the order passed by the ESI Court is
liable to be set aside as erroneously concluded that he
is liable to pay the contribution to the wages paid by
the canteen employees , who are not employed by him and

there is no employer-employee relationship between them."

3. The learned counsel appearing for the appellant argued that the appellant is operating a whole sale stores registered under Pondicherry proprietary society and running liquor shops as allotted by the Government. Accordingly, 10 shops are running in Pondicherry by its own employees. The petitioner has leased out part of the premises of each and every liquor shops to individual third parties for running canteen or petty shops dealing in eatables items. All the ten lessees running the canteen by their own employees and there is no employer-employee relationship between the petitioner and the employees of the canteen. While so, the Insurance Inspector visited the liquor shops and verified the attendance register and treated the employees of the canteen contractors as employees of the petitioner establishment and suggested compliance with the provisions of ESI Act. Based on the above report, the respondent issued Show Cause Notice describing him as a Principal Employer and demanding contribution. Immediately, he challenged that notice before the ESI Court at Pondicherry, but without considering his evidence, the ESI Court, erroneously dismissed the application. Aggrieved by that, he approached this Court and he prays to allow the appeal.

4. By way of reply, the counsel for the ESI Corporation submits that all those canteens are running inside the premises of the liquor shops and there is no evidence of the appellant side to show that those employees were running canteen through its contractor separately. When there is no evidence, with regard to such contract then all those employees in canteen are comes under the principal employer namely this appellant. Even during their inspection, the appellant not produced any registers to show that the canteen employees were appointed through its contractor.

5. Even before the ESI Court, no oral evidence on the side of the appellant was adduced and the documents marked as Exs.P1 to P12. On the side of the respondents Exs.R1 and R5 were marked.

6. The appellant relied the lease agreement said to be entered between himself and those contractors, but those agreements are a self serving document, which is not sufficient to conclude that the canteen employees are appointed through contractors. In spite of opportunity given to the appellant they have not produced any other relevant tangible material evidence. So, the ESI Court rightly concluded that the canteen employees are also come under the control of the principal

employees/appellant, who is the immediate employer and rightly dismissed the petition. This Civil Miscellaneous Appeal is dismissed as not maintainable in law. Accordingly, the substantial question of law is answered.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

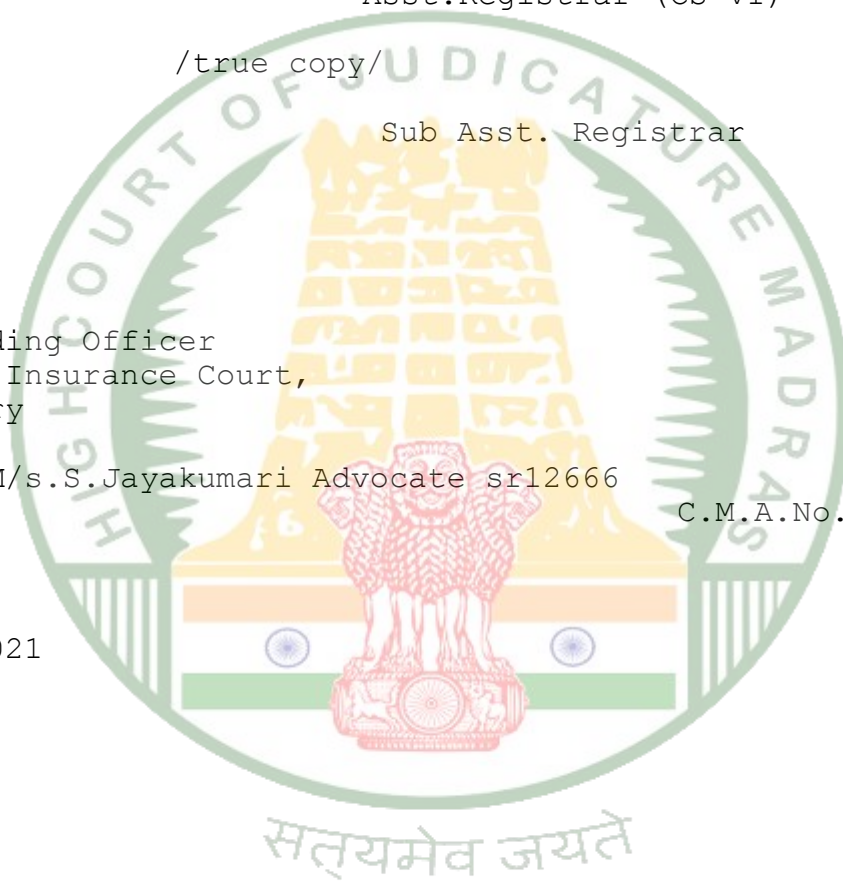
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To
The Presiding Officer
Employees Insurance Court,
Pondicherry

+1 cc to M/s.S.Jayakumari Advocate sr12666

C.M.A.No.490 of 2014

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