

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.425 of 2017
and
C.M.P.No.2955 of 2017

Rajith Exports,
Rep.by Proprietor Suresh Kumar,
No.3, South Boag Road,
T.Nagar,
Chennai - 600 017

... Appellant

Vs.

ESI Corporation
Rep.by the Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034

.. Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employee's State Insurance Act, 1948 against the order and decreetal order dated 30.09.2016 of Employees Insurance Court (Principal Labour Court), Chennai in E.S.I.O.P.No.63 of 2004.

For Appellant : Mr.N.Senthil Kumar

For Respondent : Mr.K.Prabakar

J U D G M E N T

The order dated 30.09.2016 passed in E.S.I.O.P.No.63 of 2004 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant has not raised any Substantial Question of law, which is mandatory under Section 82 of the ESI Act. In the absence of any substantial question of law, the appeal itself is not entertainable.

3. However, the learned counsel for the appellant argued the matter on merits with reference to the factual matrix of the case. The contention raised is that the respondent/Corporation had not issued any notice or opportunity to the petitioner and therefore, the entire proceedings under Section 45-A of the Act is in violation of the Principles of Natural Justice.

4. Perusal of the order passed by the ESI Court reveals that, Ex.R1 is the letter dated 23.02.1995 from the appellant to the Regional Director of Employees State Insurance Corporation. The said document states that the appellant is the manufacturer of ready made garments and he started the factory from November 1994. The appellant employed 25 employees from January 1995. Thus, the appellant wanted to cover employees and filed Form 01 for registering the company under Employees State Insurance Act. Form 01 shows that the appellant employs 19 male and 6 female employees as on January 1995. On the basis of Form 01, the appellant was brought under purview of Employees State Insurance Act from 01.01.1995 and given the ESI Code No.51-58442-18. The appellant through Ex.R2, Exs.R3, R4 and R5, which all are the enquiry reports of the Insurance Inspector. Ex.R3 shows that the Insurance Inspector visited the premises of the appellant on 17.01.2002 and informed that the employer was not available. Again, he visited the premises on 18.01.2002 as evidenced from Ex.R4. Mr.Dayalan, incharge of the appellant company, informed that the employer has gone out. Thus, the Inspector issued spot letter, advised the employer to submit the records on 25.01.2002. On 25.01.2002 also, the employer was not available. The factory incharge Mr.Dayalan had not produced any records. The report is produced as Ex.R5. Ex.R6 is the Form C18 notice, claiming a contribution of Rs.3,85,584.37 for the period from 1/1995 to 9/2001. Ex.R7 is the xerox copy of the acknowledgment card. Ex.R8 is the impugned order under Section 45-A of the ESI Act.

5. Even the ESI Court made a categorical finding that as per the evidence of P.W.1, the appellant admitted giving Form 01 to the respondent ESI Corporation, intimating that the appellant employed 19 male and 6 female totaling 25 employees. He did not inform ESI Corporation, after the receipt of Ex.R2 that he employed only less number of persons. However, the appellant admitted that one Mr.Dayalan was working under him for one month.

6. The learned counsel for the appellant made a submission that he was acquitted from the criminal case. This Court is of the opinion that as far as the proceedings under the ESI Act is concerned, the appellant himself given a letter dated 23.02.1995 to the Regional Director of Employees State Insurance Corporation, stating that 25 employees were working from January 1995 onwards. When the letter of the appellant itself reveals

the fact that the Inspector also conducted an inspection on various dates, for which, documents were marked before the ESI Court. The ESI Court considered all those documents and as well as the contention of the appellant that he has not received Form C18 Adhoc Notice. Accordingly, the ESI Court arrived the following findings in Paragraph 12, which reads as under:

"12. Assuming that the petitioner has not received Form C18 Adhoc Notice, the petitioner can not justify the nonpayment of contribution. Regulation 31 of the Employees State Insurance (GEN) Regulations, 1950 provides that the employer has to pay the contribution within 21 days of the last day of the calendar month in which the contribution falls due. Apparently the petitioner has not paid contribution even for a single month after the company was brought under the purview of the ESI Act. Though the petitioner claims that he has employed only 4 or 5 persons, it is seen from the records that the petitioner has not informed the respondent about employing less number of employees. The regulation 10-C of the Employees State Insurance Act 1950 stipulates that the employer has to intimate to the Regional Office of the Employees State Insurance Corporation with regard to any change in the particulars given Form 01 at the time of registration. Petitioner informed the respondent through Form -01 about employing 25 employees. The petitioner has not intimated the respondent about employing only 4 of 5 employees or less number of employees. The petitioner has also not produced any materials before this Court to show that he has employed only less number of employees and he has not conducted his business. Therefore, this Court is of the considered view that the impugned order was passed on the basis of available records is perfectly in accordance with law and therefore, the petitioner is not entitled for any relief. In this view of the matter, this petition is dismissed. Thus, the issues are answered."

7. In view of the fact that the ESI Court has elaborately considered the entire factual matrix, and arrived a conclusion that the order passed by the authority is in consonance with the provisions of the Act, there is no reason to interfere with the order passed by the ESI Court. Further, the appellant has not at all raised any substantial question of law as mandated under Section 82 of the ESI Act.

8. Accordingly, the order dated 30.09.2016 passed in E.S.I.O.P.No.63 of 2004 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.425 of 2017 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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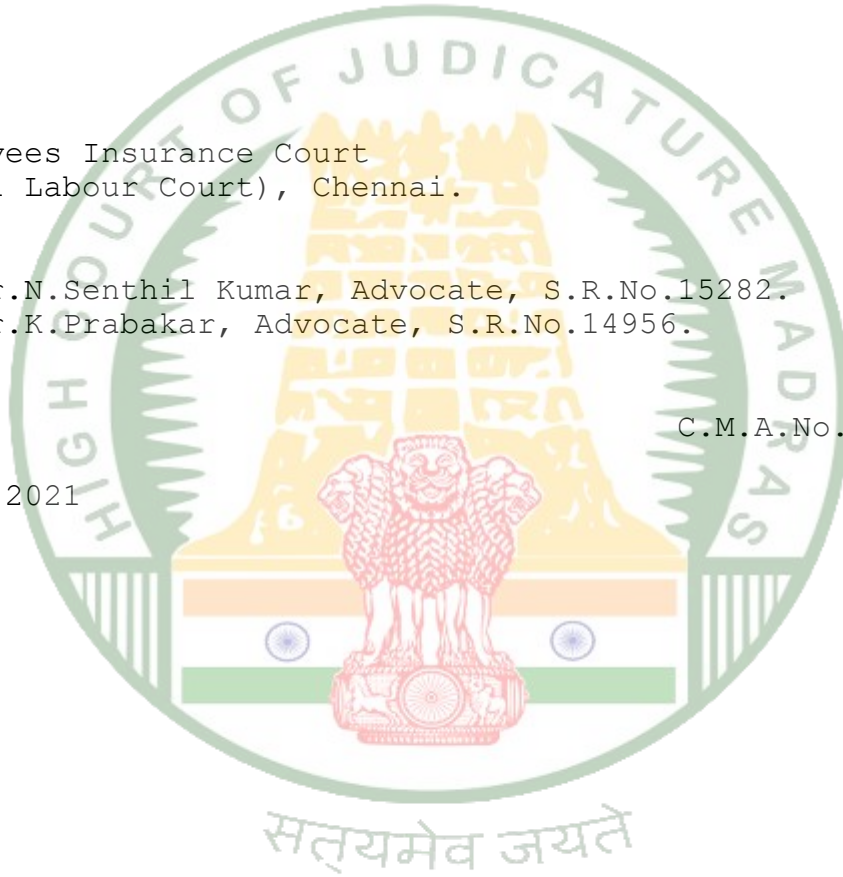
The Employees Insurance Court
(Principal Labour Court), Chennai.

+1cc to Mr.N.Senthil Kumar, Advocate, S.R.No.15282.

+1cc to Mr.K.Prabakar, Advocate, S.R.No.14956.

C.M.A.No.425 of 2017

MGR(CO)
CSR 15.04.2021



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