



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.11901 of 2011
and M.P.No.1 & 2 of 2011

M/s.Mangalore Ganesh Beedi Works,
Door No.1, Yadavalar East Streer,
Melapalayam,
Tirunelveli - 627 005.

... Petitioner

Vs.

1. Principal Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai - 600009.

2. Joint Director,
Sub Regional Office,
Employees State Insurance Corporation,
Tirunelveli.

3. Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600034.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records from the file of the first respondent herein in his proceedings bearing letter No.21576/L1/2010-1 dated 08.09.2010 and to quash the above mentioned letter No.21576/L1/2010-1 dated 08.09.2010 issued by the first respondent herein.

For Petitioner : Mr.S.Jayaraman

For Respondents: Mr.C.Selvaraj
Additional Government Pleader [R1]
Mrs.Jayakumari [R2 & R3]

ORDER

The petitioner's request for exemption of their establishment from the provisions of the ESI Act under Section



87 r/w. Section 91-A was rejected through the impugned order dated 08.09.2010 on the ground that such exemption with retrospective effect is impermissible. The justification given by the Authority in the impugned order was already held to be correct in an earlier order of this Court passed in the case of 'Salem District Consumers Co-operative Wholesale Stores Ltd., Vs. Principal Secretary to Government, Labour and Employment Department & others' in W.P.No.10461 of 2011 dated 17.08.2021 and the relevant portion of the order reads as follows:-

".....

15. I do not find any reason to interfere with the discretion exercised by the Government in this regard. The very object of the ESI Act is to provide certain benefits to the employees covered under the Act, in cases of sickness, maternity and employment injury. When most of the benefits of the scheme seem much more beneficial than the management scheme, I do not find any logical reason to deprive the employees of the petitioner from such benefits by directing the Government to grant exemption. Since the Government has exercised its jurisdiction in a judicious manner, the impugned order cannot be found fault with.

16. There is yet another aspect of the matter. Section 91A of the Act provides for prospective exemption. In the instant case, the petitioner has sought for retrospective exemption through his application dated 05.06.2008, whereby, they have sought for exemption for the period from 12.02.1978 to 31.03.2005. Since Section 91A does not provide for retrospective exemption, the application itself seeking for retrospective exemption cannot be sustained."

2. The aforesaid extract is self-explanatory. As such, the reason given by the respondents that Section 91-A does not provide for retrospective exemption, does not require any interference.

3. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



Pns

To

WEB COPY

1. The Principal Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai - 600009.
2. The Joint Director,
Sub Regional Office,
Employees State Insurance Corporation,
Tirunelveli.
3. The Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 600034.

+1cc to Mrs.Jayakumari, Advocate, S.R.No.14372
+1cc to the Government Pleader, S.R.No.14627

W.P.No.11901 of 2011

AK(CO)
CT 18/03/2022