



W.P.(MD).No.4615 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.4615 of 2012

and

M.P.(MD).No.2 of 2012

Kajah Enterprises Private Limited,
Represented by its Joint Managing Director,
Post Box No.12, No.48, South Mount Road,
Tirunelveli Town,
Tirunelveli District.

... Petitioner

Vs.

1.The Principal Secretary to Government,
Labour and Employment Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Regional Joint Director,
ESI Corporation,
Sub-Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoonthurai,
Tirunelveli – 627 001.

3.The Recovery Officer,
Office of Recovery Officer,
ESI Corporation,
Sub-Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoonthurai,
Tirunelveli – 627 001.



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4.Smitha

5.Mohammad Abdul Ali

6.Chockalingam

7.Unnikrishnan

8.Sellakrishnan

9.V.Rajeswari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records connected with Letter No.6978/L1/2011-1 dated 06.05.2011 on the file of the first respondent and to quash the same and direct the Government to reconsider application dated 05.04.2010 submitted by the petitioner in accordance with law and grant the exemption as prayed for in the teeth of the exemptions already granted for the petitioner for the period 01.01.2004 to 31.12.2006, 01.01.2007-31.12.2007 and 01.01.2008 to 31.12.2009.

For Petitioner : Mr.M.Jerin Mathew

For R-1 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

For R-2 and R-3 : Mr.N.Dilip Kumar

For R-4 to R-9 : Mr.E.Ilango



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ORDER

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This Writ Petition is filed to quash the impugned order dated 06.05.2011 and to reconsider the petitioner's application dated 05.04.2010 in accordance to law and grant the exemption as prayed for in the teeth of the exemptions already granted for the petitioner for the period 01.01.2004 to 31.12.2006, 01.01.2007-31.12.2007 and 01.01.2008 to 31.12.2009.

2. The petitioner is covered under the Employees Insurance Act. However, the petitioner is seeking exemption under Section 87, 88, 91A of ESI Act. The petitioner was granted exemption for a period until 31.12.2009. The petitioner is seeking exemption for the subsequent period that is from 01.01.2010 to 31.12.2010 by submitting an application on 05.04.2010. The contention of the petitioner is that Section 87 of the Act was amended on 01.06.2010, whereunder the proviso clause was introduced. The second proviso reads as under:

“The Provident Fund that an application for renewal shall be made three months before the date of expiry of exemption period and the decision on the same shall be taken by the appropriate Government within two months of the receipt of such application. This proviso has come into effect from 01.06.2010. Prior to this amendment, the Act allowed to consider the application either prospectively or retrospectively”.



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3. Therefore, the learned counsel appearing for the petitioner submitted that earlier proviso which was prevailing prior to this amendment states that the application ought to be submitted ought one month prior to the date of exemption. Prior to this amendment, the Act allowed to consider the application either prospectively or retrospectively. Hence the Learned Counsel for the petitioner submitted that the application should be considered as per the earlier provisions granted exemption retrospectively from 12.01.2010 and cannot deny the exemption by applying the amended provisions.

4. The learned counsel appearing for the respondents had filed counter and submitted since the amended Act has come into effect on 12.06.2010 and the application was pending before the Government, then the Government had rejected the application based on the amended proviso. The Government has rightly rejected and therefore, prayed to dismiss this Writ Petition.

5. Heard Mr.M.Jerin Mathew, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the first respondent and Mr.N.Dilip Kumar, learned counsel for the second and third respondents and Mr.E.Ilango, learned counsel for the respondents 4 to 9.



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6. It is an admitted fact that the petitioner Industry has submitted an application on 05.04.2010 and the amendment came into effect on 12.06.2010.

Now, the question arises whether the application ought to be considered based on the amended proviso or the petitioner's application ought to be considered based on the provisions which was prevailing earlier to the amendment. The provisions that were prevailing earlier permitted the petitioner to submit an application one month prior to the date of exemption and the government were empowered to grant exemption prospectively and retrospectively. When the application was submitted on 05.04.2010, the provisions that was prevailing is applicable and not the amended provisions. Even though the application is submitted in the month of April and the petitioner's establishment ought to be covered for the period January-April as per the earlier provisions. The Government cannot reject the application by citing the subsequent amendment. Any amendment in the Act ought to be implemented prospectively unless it states that the amendment is applicable retrospectively. Since the government had considered the application after the amendment came into effect, the government cannot be permitted to consider the application as per the amended provisions. Admittedly on 05.04.2010, when the application was pending, the existing provisions allowed to considering the application retrospective also.

7. Therefore, this Court is of the considered opinion that the impugned



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order is liable to be quashed and it is quashed. The first respondent is directed to consider the application and grant exemption for the period from 01.01.2010 to 31.12.2010 based on the proviso that was prevailing prior to the amendment. The said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No

Internet : Yes/ No

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