BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.20412 and 20436 of 2013
and
M.P.(MD).Nos.1, 1, 2 and 2 of 2013

W.P.(MD).No.20412 of 2013:

Seyad Home Industries Private Limited,
Represented by its Manager,
A.P.P.Packeer Mohamed,
House of Seyad,
North Bye-pass Road,
Vannarapettai,
Tirunelveli – 627 003. ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Labour and Employment Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Deputy Director,
ESI Corporation
Sub-Regional Office,
Salai Street, Vennarpettai,
Tirunelveli – 627 003.

3.The Recovery Officer,
Office of Recovery Officer,
ESI Corporation,
Salai Street,
Vannarapettai,
Tirunelveli – 627 003. ... 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 of the third respondent made in his proceedings in Ref.No. 66-00-032639-000-0010/C-19/INS/SRO/TLI dated 08.11.2013 and quash the same and consequently forbearing the respondents 2 to 4 or any officer men or agents of the employees State Insurance Corporation under the respondents 2 to 4 from any manner demanding or taking any coercive steps for collection of ESI contributions from the petitioner prior to 31.12.2013.

For Petitioner : Mr.S.Karthik

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

For R-2 and R-3 : Mr.K.Hemakarthikeyan

W.P.(MD).No.20436 of 2013:

No.5, Beedi Factory,
Represented by its Manager,
No.105, Nethaji Road,
Melapalayam,
Tirunelveli – 627 003. ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Labour and Employment Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Deputy Director,
ESI Corporation
Sub-Regional Office,
Salai Street, Vannarpettai,
Tirunelveli – 627 003.

3.The Recovery Officer,
Office of Recovery Officer,
ESI Corporation,
Salai Street,
Vannarapettai,
Tirunelveli – 627 003. ... 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 of the second respondent made in his proceedings in Ref.No. 66000324410000010/8120131148, dated 01.08.2013 and consequential order of the third respondent in No.66/RRC/66000324410000010/699/13 dated 29.11.2013 and quash the same and consequently forbearing the respondents 2 to 4 or any officer men or agents of the employees State Insurance Corporation under the respondents 2 to 4 from any manner demanding or taking any coercive steps for collection of ESIC contributions from the petitioner prior to 31.12.2013.

For Petitioner : Mr.S.Karthik

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

For R-2 and R-3 : Mr.P.Ganapathysamy

COMMON ORDER

The Writ Petition in W.P.(MD).No.20412 of 2013 has been filed to quash the order dated 08.11.2013 and the Writ Petition in W.P.(MD).No.20136 of 2013 is filed to quash the order dated 01.08.2013 and consequential order dated 29.11.2013 and consequently forbearing the respondents or agents of the employees State Insurance Corporation, from any manner demanding or taking any coercive steps for collection of ESI contributions from the petitioners prior to 31.12.2013.

2. These two Writ Petitions are filed by the establishments, who are the members of the Association of South Tamil Nadu Beedi Manufacturers Association. The members of the petitioner's Association are covered under Beedi and Cigar (Conditions of Employment) Act, 1966. Through notifications dated 05.11.1999 and 03.09.2002, the provisions of the Employees State Insurance Act 1948 were extended to Melapalayam and Kulanvanigarpuram,

Palayamkottai Taluk, Tirunelveli District and Thenkasi Taluk, Tirunelveli District.

3. The brief facts as stated in the affidavit are that after extension, the petitioner Association approached the Government seeking exemption under Sections 87, 88 and 91A of the Employees State Insurance Act and the government had granted exemption periodically from 01.11.1999. The Government Order states that the exemptions were given continuously. The G.O.696 dated 22.12.2009 would states that 15 Beedi Manufacturing Companies were given exemption, out of which 12 companies were given exemption from 01.11.2007 to 31.12.2009 that is about 26 months and the remaining 3 companies, exemptions were granted for about 24 months. The expiry of exemption period is on 31.12.2009. The petitioner had submitted an application dated 01.12.2009 to grant exemption for the period from 01.01.2010 to 31.12.2015. The Government has passed rejection order dated 14.03.2011 and the same was challenged in W.P.(MD).No.5654 of 2011. While admitting this Writ Petition, this Court has granted interim injunction on 19.05.2011. The Writ Petition was taken for final hearing on 24.02.2014. After hearing rival submissions, this Court has passed an order. The relevant portion is extracted hereunder:

"4.Out of three grounds, the rejection on the ground of first two grounds is, in my considered view, unreasonable and unjustifiable. Though Section 91 of ESI Act would show that the exemption shall be granted not than one year at one time, the exemption order so far granted is for more than one year. The Last one such order is G.O. (D) No.696, Labour and Employment (L1) Department, dated 22.12.2009. The respondents, having granted the extension of exemption more than one year, cannot now turn to say that the extension can be granted only one year at one time, that too prospectively. In this case, granting exemption on retrospective effect does not arise as the application made on 01.12.2009 seeking exemption is for the period of exemption from 01.01.2010 and 31.12.2015. Thus, the rejection letter on the ground, as above stated, is not in order.

5. As far as the time limit fixed for applying the renewal is concerned, the same is prescribed under proviso to Section 87, which is inserted by the Employees' State Insurance Management Act, 2010 with effect from 01.06.2010. As the application made herein is on 01.12.2009 for the period from 01.01.2010, the question of applying the amendment for the application made on the prior date does not arise herein. Though learned counsel for the second and third respondents viz.. Deputy Tahsildar and Recovery officer of ESI Corporation have filed their counter raising serious objection against granting exemption for five years at one time, that too on the application made not within the prescribed time limit, the same, in my considered view, need not be considered at this stage. As a matter of fact, the competent authority to grant exemption is the Government. The Government has not filed any counter. The Government having granted exemption for more than one year at one time on earlier occasions and the ESI Corporation having accepted and acted upon the same, cannot be now permitted to raise any objection in this regard. As far as the *time limit prescribed under Section 87 of ESI Act is concerned, the same can be applied retrospectively, but not in respect of the application already made.*

6.Thus, for the reasons discussed above, this Court is of the view that the impugned order of rejection is liable to be set aside and the first respondent can be directed to consider the application, dated 01.12.2009 for renewal of exemption for the period mentioned therein, in the light of the identical orders passed in the earlier occasions and in the light of the observation made in this order.

7.In the result, the impugned order stands quashed with further direction issued to the first respondent to consider and pass appropriate orders on the petitioner application dated 01.12.2009, as reminded on 15.04.2010, in the light of the identical earlier orders passed in G.O.MS.No.696, dated 22.12.2009 and in the light of the observation made in this order in respect of the impugned amendment introduced to Section 87 of the Employees State Insurance Act and with the further direction issued to the respondents 2 and 3 not to make any demand under the relevant provisions of the Act. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order.

The matter was remitted back to the authorities. The authorities have considered the claim and passed an order dated 05.06.2020 in G.O.(D).No.290. However, the respondents have passed the same order without considering the directions issued by this Court. Aggrieved over the same, the present Writ Petition is filed.

4. The counter is filed by the Employees State Insurance Corporation authority. Since the Government Order is challenged in this Writ Petition, the Government is supposed to have filed counter but the government had not filed any counter. The ESI authorities have stated that every year, the petitioner's Association is bound to submit an application for one year as per Section 87 of the Act. Since the petitioner's Association has submitted an application for five years, the application was rightly rejected and prayed to dismiss this Writ Petition.

5. Heard Mr.S.Karthik, learned counsel appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader, appearing for the first respondent and Mr.K.Hemakarthikeyan and Mr.P.Ganapathysamy, learned counsels appearing for the respondents 2 and 3.

6. The admitted fact is that the petitioner's Association had submitted an application dated 01.12.2009 seeking exemption for the period from 01.01.2010 to 31.12.2015. The petitioner's Association was under an impression that the Government has every power to grant exemption for the period from 2010 to 2015, for which the petitioner relied on the earlier Government Orders, where the exemptions were granted for more than 26 months and in some cases 24 months. However, the Government has rejected

the application in entirety. This Court is of the considered opinion that the Government ought to have considered the application atleast for the period from 01.01.2010 to 31.12.2010 and rejected the application for the subsequent period and ought to have directed to submit application every year. Since the Government has granted exemption for 26 months and 24 months for earlier period, the Association was under legitimate expectation that the Government would consider for the period of five years also. Therefore, the rejection in entirety is absolutely wrong. The Government ought to have considered the applications and granted exemptions from 01.01.2010 to 31.12.2010 and ought to have directed the Association to submit application three months prior to the due date for every year and obtained renewal every year. Since the Government has committed mistake and such mistake cannot be fastened on the petitioner's Association. Now, the mistake ought to be rectified.

7. Since the time has lapsed and the petitioner could not get the approval due to the mistake of the government, for the subsequent years also, the Government ought to have granted exemption. The learned counsel appearing for the respondents relied on the Hon'ble Division Bench judgement rendered in W.A.(MD).No.911 of 2010 dated 18.03.2021 and submitted retrospective renewal cannot be granted. On perusal of the judgment it is seen that the

Company has sought retrospective exemption for the period of 17 years. The facts in those cases are entirely different and the fact in the present case is different. Since in the present case, the Association has sought only prospective renewal and not retrospective renewal, this Court is of the considered opinion that said judgment is not applicable to the present case.

8. The next contention that was raised by the respondent is that the petitioner association ought to have submitted an application three months prior to the date of expiry as enacted in the amendment. It is seen that prior to the amendment, the procedure followed is that the petitioner should submit an application one month prior to the date of expiry. This Court is of the considered opinion that whenever there is an amendment, the amendment should be implemented smoothly. The subsequent amendment granting three month time to submit application cannot be implemented to the period prior to the amendment.

9. For the reasons stated supra, the Writ Petitions are allowed on the following terms:

i) The petitioner's Association has obtained exemption from the year 2014-2015 regularly every year. Therefore, the Government is directed to grant exemption and pass separate Government Orders for each and every year for the period from 2010-2011, 2011-2012, 2012-2013 and 2013-2014.

ii) This order shall be implemented within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. At this juncture, the learned counsel appearing for the petitioner submitted that subsequently recovery proceedings are initiated but has no instructions to say whether the Association has paid the amount. Therefore, the Government is directed to refund the amount if the Association has already paid the amount.

11. With the above direction, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

09.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

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

2. The Deputy Director,
   ESI Corporation
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S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.20412 and 20436 of 2013

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