



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2022**

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THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

**W.P. (MD) No.126 of 2017**

**and**

**W.M.P. (MD) No.108 of 2017**

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Muruga Home Industries,  
No.4, Ambai Main Road,  
Kulavanigapuram,  
Melapalayam Post,  
Tirunelveli 627 005.  
represented by its Managing Director.

... Petitioner

Vs

1.The State of Tamil Nadu,  
represented by its Secretary to Government,  
Labour and Employment Department,  
Secretariat,  
Chennai.

2.The Regional Director,  
Employees' State Insurance Corporation,  
147, Sterling Road,  
Nungambakkam,  
Chennai 600 034.

3.Tirunelveli Muruga Home Industries Staff Union,  
No.1, Town Road,  
Thachanallur,  
Tirunelveli 627 358,  
represented by its President.

... Respondents

**Prayer:** Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter No.7877/L1/2016-4 dated 14.11.2016 issued by the 1<sup>st</sup> respondent and quash the same as illegal and consequently direct the 1<sup>st</sup> respondent to grant exemption to the petitioner from the provisions of the Employees State Insurance Act, 1948 for the period from 25.07.2016 to 24.07.2017.

|                |                                                    |
|----------------|----------------------------------------------------|
| For Petitioner | : Mr.M.E.Ilango                                    |
| For R1         | : Mr.K.Balasubramani<br>Special Government Pleader |
| For R2         | : Mr.P.Ganapathisamy                               |
| For R3         | : No appearance                                    |



**ORDER**

Heard the learned counsel for the writ petitioner, learned Special Government Pleader for the 1<sup>st</sup> respondent and the learned counsel for the 2<sup>nd</sup> respondent.

2.The petitioner is engaged in the manufacture and sale of Beedis. The petitioner's establishment has been enjoying exemption under Section 87 of the Employees' State Insurance Act, 1948. However, for the period 2016-2017, the petitioner ceased to enjoy exemption. Seeking grant of the same, the petitioner submitted an application dated 16.04.2016. The said request was rejected by the impugned letter No.7877/L1/2016-4, dated 14.11.2016 by the Government. Questioning the same, this writ petition came to be filed.

3.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to quash the impugned communication and direct the respondents to grant exemption to the petitioner for the period from 25.07.2016 to 24.07.2017.

4.*Per contra*, learned Special Government Pleader appearing for the State as well as the learned Standing Counsel for the 2<sup>nd</sup> respondent Corporation submitted that no case has been made out for interference.

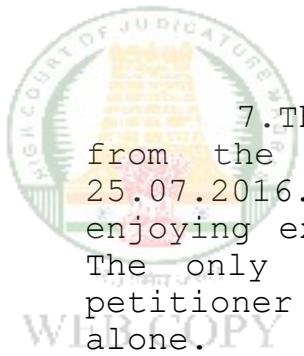
5.I carefully considered the rival contentions and went through the materials on record.

6.Section 87 of the Employees' State Insurance Act, 1948, is as follows:-

***"87.Exemption of a factory or establishment or class of factories or establishments.***

*?The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.*

*Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act: Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.*



7. There is no dispute that the petitioner enjoyed exemption from the applicability of the Act for the period prior to 25.07.2016. It is also not in dispute that the petitioner is enjoying exemption for the subsequent period from 25.07.2017 also. The only question that calls for consideration is whether the petitioner can be denied exemption for the intervening one year alone.

8. In the impugned order, one of the reasons set out for rejection is that the management had not implemented the settlement made on 10.08.2015 under Section 12 (3) of the Industrial Dispute Act, 1947 and minimum wages have not been paid to the workers as per the settlement.

9. In my view, non-implementation of the said settlement cannot be a ground for denial of exemption, all the more so, because the petitioner had already questioned the said settlement by filing a writ petition before this Court. In fact, the issue posed for determination is no longer *res integra*.

10. A learned Judge of this Court, vide order dated 21.06.2011 made in W.P.Nos.17572 of 2010 and 5186, 5187 and 10143 of 2011 had held that so long as the service conditions of the employees have not been changed since the earlier order of the Government granting exemption, unless there are any special or new reasons to refuse exemption, exemption cannot be denied.

11. In this case, it has been categorically stated that the original service conditions that obtained have not been altered to the prejudice of the workers. When the petitioner has been granted exemption for the subsequent period, there is simply no reason to refuse exemption for the intervening period alone. The statutory provision states that exemption can be granted only for one year at a time. In this case, exemption has been sought only for one year.

12. In this view of the matter, the order impugned in the writ petition is quashed and the writ petition is allowed. The 1<sup>st</sup> respondent is directed to grant exemption to the petitioner as per the provisions of the Employees' State Insurance Act, 1948 for the period from 25.07.2016 to 24.07.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar (CS)



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**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Secretary to Government,  
Labour and Employment Department,  
Secretariat,  
Chennai.

+1 CC to M/s.SPL.GP ( SR-24870[F] dated 09/06/2022 )

+1 CC to M/s.M.E.ILANGO, Advocate ( SR-24936[F] dated 09/06/2022 )

**W.P. (MD) No.126 of 2017**  
**07.06.2022**

SS(14/06/2022) 4P 4C