WPO/218/2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. MALHATI TEA AND INDUSTRIES LIMITED
VERSUS
REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, KOLKATA AND ORS.

BEFORE
The Hon'ble Justice RAJA BASU CHOWDHURY
Date: 4th October, 2023

<u>*Apperance*</u>
Mr. Soumya Majumdar, Advocate
Mr. S. P. Tewary, Advocate
…for the petitioner
Mr. S. C. Prasad, Advocate
…for the respondents

The Court:

1. The present writ petition has been filed, *inter alia*, challenging the orders dated 21st December, 2018 and 13th January, 2020 passed under Section 45A of the Employee's State Insurance Act, 1948 (hereinafter referred to as the "said Act").
2. It is the petitioner's case that the petitioner operates a seasonal factory and is, *inter alia*, engaged in the business of manufacturing of and/or dealing with tea produced and/or manufactured in its factory. According to the petitioner, although, the factory of the petitioner is exempted as a seasonal factory from being covered under the provisions of the said Act, yet the respondents have determined the contributions

payable by the petitioner both in respect of its factory as also for its office establishment.

3. The petitioner questioning the authority and jurisdiction of the respondents to determine the contributions payable by the petitioner for its seasonal factory, has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. It is also the case of the petitioner that the respondents had not only determined the contributions payable by the petitioner by issuing order dated 9th August, 2019 under Section 45A of the said Act but had also in furtherance thereto, taken steps for attaching the petitioner's bank account by invoking its power under Section 45G of the said Act. At the interim stage, by an order dated 7th August, 2020, a Coordinate Bench of this Court while entertaining the writ petition, on being prima facie satisfied with the case made out by the petitioner and also taking into consideration the Covid pandemic, directed exchange of affidavits. By the aforesaid order, the Coordinate Bench of this Court had also, *inter alia*, directed to maintain status quo in respect of the attached amount, which if realised by the respondents be kept in a separate account.

5. Mr. Majumdar, learned Advocate appearing for the petitioner by drawing the attention of this Court to the provisions of Section 1, Sub-Section (4) of the said Act, submits that the provisions of the said Act at the first instance applies to all factories other than seasonal factories.

He submits as per the definition of the seasonal factory, tea, as also manufacturing process of tea is considered to be a seasonal factory. According to Mr. Majumdar, an exception has, however, been created in respect of the factories which are engaged for a period not exceeding seven months in a year concerning the process of blending, packing or re-packing of tea or coffee thereby, exempting such factories from making payment of contributions as well.

6. He submits that in terms of the provisions contained in the said Act, since, the petitioner's office is not exempted from payment of contributions, the petitioner has all along complied with the provisions of the said Act and has made payment of contributions insofar as the office is concerned. In support of his contention that tea is a seasonal factory and is excluded from the applicability of the said Act, he has relied on a judgment of the Hon'ble Apex Court in the matter of ***Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons And Anr.,*** reported in **(1991) 3 SCC 617.** In the facts noted above, he submits that the order of attachment dated 9th August, 2019 and the order passed under Section 45A of the said Act, cannot be sustained and the same should be set aside and quashed.

7. *Per contra*, Mr. S. C. Prasad, learned Advocate appearing for the respondents by relying on the provisions of the said Act submits that

since, the petitioner had itself sought for being covered under the provisions of the said Act, the petitioner should continue to remain covered under the provisions of the said Act. By placing reliance on Section 1, Sub-section (6) of the said Act, it is submitted that the factory and establishment to which the said Act applies, cannot be exempted from the provisions of the said Act. Once coverage is extended to a factory or an establishment, the said extension of coverage shall continue as per the provisions of this Act, notwithstanding the number of persons employed therein, at any time falls below the limit specified by or under this Act, or the manufacturing process therein, ceases to be carried on with the aid of power.

8. Having regard to the aforesaid, he submits that there is no irregularity in the order passed by the respondents under Section 45A of the said Act. The petitioner was conscious that the petitioner has an alternative remedy. However, no steps have been taken by the petitioner to prefer an appeal from the order passed under Section 45A of the said Act. Pursuant to the direction passed by this Court and by relying on a report filed by the respondents, he submits that coverage of the petitioner dates back to the year 1966. As per CG register, the contributions payable by the petitioner concerning the employee have been carefully noted. By placing reliance on the same, it is submitted that the petitioner had not approached this Court with clean hands and

the writ petition should be dismissed. While distinguishing the judgment delivered by the Hon'ble Apex Court in the case of ***High Land Coffee Works*** **(Supra)**, he submits that since, the petitioner has been complying with the provisions of the said Act, the said judgment has no manner of application in terms of Section 1(6) of the said Act.

9. Having heard the learned Advocates for the parties and having considered the materials on record, I find that the petitioner is engaged in manufacturing of tea. However, the petitioner also has an office at Kolkata where it employs office staff. Although, it has been strenuously argued by Mr. Prasad, learned Advocate for the respondents that since, the petitioner is covered under the provisions of the said Act, since the year 1996; the petitioner cannot evade its liability for making payment of contribution, I am afraid and am unable to accept the same. I find from the report filed by the corporation that although, the petitioner had been making payment of contributions, such payments pertain to the office address of the petitioner. The disclosure made by the corporation to prove employees were covered under the provisions of the said Act, would show the Kolkata address. As such, the coverage of the petitioner was only extended to its employees at its office address. In so far as the tea manufacturing unit of the petitioner is concerned, the same is admittedly, in the district of Jalpaiguri. I am of the view that as per the definition of a seasonal industry, the manufacturing of tea is

covered under the definition provided in Section 2(19-A) of the said Act. To more fully appreciate the above, the relevant section is extracted hereinbelow:-

> *"(19-A) "seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decoration of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year –*
>
> *(a) in any process of blending, packing or repacking of tea or coffee; or*
>
> *(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify:"*

10. Having regard to the aforesaid and having taken note of Section 1(4) of the said Act, it would be apparent and clear that a seasonal industry is exempted from the provisions of the said Act. The Hon'ble Apex Court in the case of ***High Land Coffee Works*** **(Supra)** after considering the effect of amendment of the provisions of the said Act, in relation to definition of seasonal industry, in paragraph 7 thereof, had been, *inter alia*, pleased to observe as follows:-

> *"7. The view taken by the High Court seems to be justified. The Statement of Objects and Reasons of the Bill which later became the Act 44 of 1966 indicates that the proposed amendment was to bring within the scope of the definition of "seasonal factory", a factory*

which works for a period of not exceeding seven months in a year — (a) in any process of blending, packing or re-packing of tea or coffee; or (b) in such other manufacturing process as the Central Government may, by notification in the official Gazette, specify. The amendment therefore, was clearly in favour of widening the definition of "seasonal factory". The amendment is in the nature of expansion of the original definition as it is clear from the use of the words "include a factory". The amendment does not restrict the original definition of "seasonal factory" but makes addition thereto by inclusion. The word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include."

11. Thus, taking note of definition of seasonal factory and the extension of coverage to the seasonal factory in terms of Section 1(4) read with Section 2(19-A) of the said Act, I am of the view that the respondents could have only confined the coverage of the said Act, to the petitioner's

office premises situated at Kolkata and could not have extended the same to the tea manufacturing factory at Jalpaiguri. Having regard to the same, the orders dated 21st December, 2018 and 13th January, 2020, passed under Section 45A of the said Act cannot be sustained, the same are accordingly set aside and quashed. On the same consideration, the order of attachment dated 9th August, 2020 is also set aside and quashed.

12. The aforesaid direction shall, however, not stand in the way of the respondents, for passing fresh orders for the purpose of determining the contributions payable by the petitioner in respect of its office at Kolkata. In the event any recovery has been made from the petitioner's account, the same shall be adjusted by the respondents as against the future contribution to be payable by the petitioner. The petitioner shall be entitled to interest from the date of recovery till such time amount is adjusted. The percentage of interest shall be at par with the interest payable by the Corporation on the refund of deposit, made while preferring an appeal under Section 45AA of the said Act.

13. With the above observations, the writ application is disposed of.

14. There shall be no order as to costs.

15. Urgent Photostat certified copy of this order if applied for we made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

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