



CMA.No.1312 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2023

PRONOUNCED ON : .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1312 of 2015

Hotel Ram International Private Limited
by its Authorised Signatory M.Babu
Pondicherry 605001

Appellant

Vs

1. Employees State Insurance Corporation
by its Regional Director, Pondicherry
2. The Assistant Director, Employees State
Insurance Corporation, by its Regional Director
Pondicherry

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the order and decree, dated, 22.04.2015, made in EIOP.No.10 of 2010, by the ESI Court, Pondicherry.

For Appellant : Mr.S.Haroon

For Respondents : Mr.T.N.C.Kaushik

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed against the order and decree, dated, 22.04.2015, made in EIOP.No.10 of 2010, by the ESI Court, Pondicherry.
2. The Petitioner, who is doing hotel business, has filed the above petition, before the ESI Court, Pondicherry, against the order dated 28.05.2010, of



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the Respondent ESI Corporation, directing the Appellant to pay a sum of Rs.6,78,252/- as ESI Contribution, in respect of the employees employed by the contractor on assumed wages. The above petition was contested by the Respondent ESI Corporation, by filing a counter. On the side of the Appellant, PW.1 was examined and Ex.P1 to Ex.P9 were marked. On the side of the Respondents, Ex.R1 to R8 were marked. The ESI Court has dismissed the petition, by the impugned order. Hence, this appeal has been filed by the Appellant Establishment.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
4. Among other grounds, the main ground raised by the Appellant is that in the absence of the Appellant and without hearing the Appellant, the Respondent Corporation Respondent passed the order dated, 28.05.2010, directing the Appellant to pay the ESI Contribution and that the impugned order has been made, by the ESI Court, without considering the said aspect and hence, the impugned order is not sustainable and as such, the matter may be remanded back to the ESI Corporation to consider the matter afresh and pass orders, on merits, after affording sufficient opportunity to the Appellant.
5. In reply to the above grounds raised by the Appellant, though the learned counsel for the Respondent Corporation has put forth his arguments in support of the impugned order, it would be suffice if the issue of 'not affording opportunity to the Appellant' is considered and answered.
6. It is not in dispute that the Inspector of the Respondent Corporation has



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made an inspection on 03.09.2009 at the premises of the Appellant Establishment and hearings were fixed on 22.04.2010 and thereafter, on 27.05.2010. As seen from the counter filed by the Respondent Corporation, the Appellant did not visit the Regional Office of the Respondent Corporation, thereby meaning that personal hearing was not conducted at all. However, without giving an opportunity of personal hearing to the Appellant, the final order, dated 28.05.2010 has been passed by the Respondent Corporation and hence, the impugned order passed, without considering the said aspect, is not sustainable. In the interest of justice, an opportunity should be given to the Appellant and the matter is to be remanded back to the Respondent Corporation for consideration afresh.

7. In fine, this Civil Miscellaneous Appeal is allowed, setting aside the impugned order, dated 22.04.2015 of the ESI Court. The matter is remanded back to the Respondent Corporation to consider the matter afresh and pass orders, after affording sufficient opportunity of personal hearing to the Petitioner, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order, No costs.

.06.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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A.A.NAKKIRAN, J.

Srcm

To

1. Employees State Insurance Corporation by its Regional Director,
Pondicherry
2. The Assistant Director, Employees State Insurance Corporation, by its
Regional Director, Pondicherry
3. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.1312 of 2015

.06.2023