IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	7/11/2023
Delivered on	20/11/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.10238 of 2014
a n d
M.P.No.1 of 2014

M/s. Karur Sarvodaya Sangh
rep. By its Secretary
Mr.K.R.Subramaniam
Vaiyapuri Nagar
Karur. ... Petitioner

Vs

1. The State of Tamil Nadu
   rep. By its Secretary
   Labour and Employment Department
   Fort St. George
   Chennai 600 009.

2. The Regional Director
   E.S.I.Corporation
   143 Sterling Road
   Chennai 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus to call for the records of the impugned order dated 3/3/2014 in Letter No.29593/L1/2013-4 passed by the first respondent to dispose of the application dated 16/12/2013 filed by the petitioner Sangh for exemption under Section 87 r/w. 91A of the Act for the period from 1/4/1991 to 31/5/2010 from the provisions of the E.S.I Act.

For petitioner ... Mr.V.Ajay Khose

For respondent ... Mr.C.Sangamithirai
Special Government Pleader
for R.1

Mr.TNC Kousik
Standing Counsel
for ESI – R.2

- - - - -

ORDER

This writ petition is filed seeking to quash the impugned order dated 3/3/2014 vide, Letter No.29593/L1/2013-4 by the first respondent to dispose of the application dated 16/12/2013, seeking for exemption under Section 87 r/w. 91A of the Act for the period from 1/4/1991 to 31/5/2010 from the provisions of the E.S.I Act.

2. Sarvodaya Sangh was originally formed by Mahatma Gandhiji with an object of providing job opportunities to the poor, rural and downtrodden people and to promote Khadi industries. The petitioner Sangam is also similarly formed in the name of Karur Sarvodaya Sangh. Since there was no profit and no loss motive for the Sangh, the State and Central Governments have exempted the Sangh from the provisions of the Income Tax Act, Payment of Bonus Act, Central Sales Tax Act, Tamil Nadu General Sales Tax Act, Tamil Nadu Shops and Establishments Act and in respect of Employees State Insurance Act. By virtue of G.O.D1.No.32 dated 7/7/1990, the petitioner Sangh was exempted from the purview of the ESI Act for the period from 24/10/1988 to 31/3/1991 in consultation with the Regional Director, E.S.I Corporation, Chennai/second respondent.

3. The application for seeking exemption from the purview of the Act, i.e., Employment State Insurance Act, for the period from 1/4/1991 to 31/3/2002 was filed by the petitioner Sangh under Section 87 r/w. 91-A of the Act. However, the said application was rejected by way of an order, dated 6/5/2002 in Letter No.18166/L1/2001-4. Challenging the said order, the petitioner has filed W.P.No.41908 of 2002 before this

Court, which was disposed of, on 7/10/2009 by setting aside the impugned order therein and remanded the matter to the first respondent with a direction to adhere to the provisions of Section 87 of the Act and directed to pass fresh orders within a period of three months.

4. Thereafter, the petitioner's son has filed an application dated 17/11/2009 seeking exemption for the period from 1/4/1991 to 31/3/2009 under Section 87 r/w.91-A of the Act. The said representation was also dismissed without giving an opportunity to the petitioner. Accordingly, W.P.No.9806 of 2010 was filed. This Court has allowed the writ petition on 13/9/2013 and quashed the impugned order with a direction to decide the issue afresh. It was specifically directed by this Court to give an opportunity to all the parties and to permit the petitioner to file fresh documents.

5. Consequently, the first respondent has issued a letter, dated 3/12/2013 vide, letter No.29593/L1/2013-1 dated 3/12/2023, requesting the petitioner to attend the personal hearing on 12/12/2013 @ 11.00 a.m. The petitioner Sangh also received one more letter intimating the postponement of personal hearing on 16/12/2013 @ 11.00 a.m. The

petitioner filed fresh application dated 16/12/2013, seeking exemption for the period from 1/4/1991 to 31/5/2010. Later, after hearing, the petitioner's Sangh was informed by way of a letter dated 3/3/2014 that the petitioner's request cannot be considered for giving exemption for the period from 1/4/1991 to 31/3/2009. Aggrieved by the same, present writ petition is filed.

6. The Regional Director, E.S.I. Corporation/second respondent has filed a counter, stating that the exemption granted under various enactments such as Income Tax, Central Sales Tax Act, General Sales Tax Act, Shops and Establishments Act, etc., are reasonable, as they do not directly provide any benefit to the individual employee. Whereas, the Employees State Insurance Act is to bring within its scope even persons who are connected with the work of the factory or establishment although their work is incidental to its purpose.

7. Heard both sides and perused the materials available on record.

8. The petitioner Sangh has been admittedly undertaking the activities of promoting Khadi industries to provide employment

opportunities to the poor rural and downtrodden people. It is being run as no loss and no profit basis. Considering the philanthropic activities of the petitioner's Sangh, the Government has given exemption to the petitioner's Sangh under various enactments.

9. However, in so far as Employment State Insurance Act is concerned, for the reasons known to the respondents, exemption has not been given for the period from 1/4/1991 to 31/3/2022. It is surprising to note that respondents have given exemption to the petitioner under the purview of the Employees State Insurance Act for the period commencing from 24/10/1988 to 31/3/1991 and also for a further period commencing from 1/4/1991 to 31/3/2002. However, the respondent Government has denied such exemption for the period from 1/4/1991 to 31/3/2002, without assigning valid reasons. The denial of such exemption was challenged thrice before this Court. On two occasions, it was set aside. However, on the third occasion also by way of an impugned order, the respondents have rejected the request of the petitioner Sangh for giving exemption from the purview of ESI Act.

10. It is to be noted that till now, line of activity of the petitioner has remained unchanged from 24/10/1988. From 24/10/1988 to 31/3/1991, the exemption was also given again for a period of ten years commencing from 1/4/2002 onwards. Once the exemption is given prior to and subsequent to, there is no reason as to why the exemption is declined for the period 1/4/1991 to 31/3/2002.

11. It is the case of the respondents that during the period commencing from 1/4/1991 to 31/3/2002, the petitioner is involved and indulged in commercial activity, whereby their nature of activity has suddenly changed. If that is the case, the respondents should not have granted the exemption subsequent to 31/3/2002. However, such exemption was given to the petitioner for a period of ten years subsequent to 31/3/2002. Therefore, refusal to grant exemption for the said period is without any cogent reason and arbitrary and hence, required to be interfered with by the Court.

12. After reserving this matter for pronouncing orders, learned counsel appearing for the petitioner has made a mention and filed copies of the additional typed set which would go to show that subsequent to

the filing of this writ petition, the Government has passed G.O.Nos.277 to 287 dated 26/4/2018 giving exemption to the petitioner Sang, from the purview of the Employment State Insurance Act.

13. A reading of the above said G.Os filed by the petitioner would go to show that exemption has already been given, as sought for by the petitioner. In view of the above, no further order is required to be passed.

14. Accordingly, this **writ petition is closed.** No costs. Consequently, connected Miscellaneous Petition is closed

20/11/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Secretary
   State of Tamil Nadu
   Labour and Employment Department
   Fort St. George
   Chennai 600 009.

2. The Regional Director
   E.S.I.Corporation
   143 Sterling Road
   Chennai 600 034.

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order in
W.P.No.10238 of 2014

20/11/2023