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C.M.A.No.660 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 24.04.2023

JUDGMENT PRONOUNCED ON: 07.07.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.660 of 2023

and

C.M.P.No.5605 of 2023

M/s. Sri Paduka Distributors
Rep. by its partner R.Rajagopal
No.44, Chakarapani Street
Chennai 600 033

...Appellant

Vs.

1. The Employees' State Insurance Corporation
Represented by the Regional Director
No.143, Sterling Road, Nungambakkam
Chennai 600 034.

2.The Recovery Officer,
Employees' State Insurance Corporation,
143, Sterling Road, Nungambakkam,
Chennai- 600 034.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 82 of the Employees' State Insurance Act, praying to set aside the order and decree of the Employees Insurance Court (Principal Labour Court) Chennai dated 17.08.2021 in EIOP No.57 of 2002.



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For Appellant : Mr. Anand Gopalan
for T.S.Gopalan & Associates

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

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JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order and decree of the Employees Insurance Court (Principal Labour Court), Chennai dated 17.08.2021 in EIOP No.57 of 2002.

2. The above appeal was admitted on the following questions of law.

"1. Has not the ESI Court erred in overlooking the plea of jurisdiction raised by the Petitioner, in respect of the employees whose Headquarters are at different regions.

2. Whether the ESI Court was justified in concluding that the demand of the Regional Office, ESI Corporation for employees engaged outside the State of Tamil Nadu was proper.

3. Whether ESI Court was justified in overlooking the evidence of RW-1, who has candidly admitted that the demand, in so far as employees employed outside the state of Tamil Nadu are concerned, cannot be made."

3. The appellant being a Distributor, was engaged in distribution and sale of consumers products. The appellant, for the purpose of their business,



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engaged persons across the Country to promote their products from their respective Regions. Though the employees were working across the Country, a consolidated account of entire business of the appellant, was maintained at Chennai. The head-quarters of the employees who were engaged in distribution of sales of consumers products, were in the respective States/Region to which they were appointed. The employees were not required to come to Chennai for a major part, i.e. for more than 7 months in a year, as they were away in the respective regions assigned to them.

4. While so, an inspection was conducted by the officials of the first respondent, based on which a show cause notice was issued in respect of contribution for the period of 6/1993 to 9/2001 under the E.S.I Act. The appellant/Distributor through their representatives, attended the hearing on 29.04.2002 and though the representative of the appellant was informed of the date of hearing, the appellant was surprised to receive order dated 19.06.2002 under Section 45-A of the E.S.I Act, claiming a contribution of Rs.12,17,482/- towards the wages calculated at Rs.1,650/- per month for 71 employees.

5. According to the appellant, 71 persons for whom contribution was



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claimed, were located in different parts of the Country and hence, the appellant was entitled to the benefit of the G.O. passed by the Government of Tamil Nadu in G.O.Ms.No.2082, Labour Department dated 29.08.1983. The appellant therefore filed E.I.O.P.No.57 of 2002 challenging the said order passed under Section 45-A of the E.S.I Act.

6. The respondents/Corporation contested the said E.I.O.P and the E.S.I. Court, on full trial, remanded the matter back to the respondents/ Corporation for fresh consideration of the documents filed by the appellant, and with further direction to complete the enquiry within a period of 3 months therefrom.

7. Aggrieved by the above said order of remand, the appellant preferred an appeal in C.M.A.No.71 of 2017 before this Court under Section 82(2) of E.S.I Act. This Court, vide judgment dated 22.02.2021, set aside the remand order passed by the E.S.I Court and directed the E.S.I. Court to dispose of the matter, on merits, within a period of two months from the date of receipt of a copy of the judgment.

8. On remand, the E.S.I. Court, passed the impugned order dated 17.08.2021, and questioning the said order passed by the E.S.I. Court on



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remand, the present appeal is filed by the appellant/Distributor.

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Brief facts:

9. The appellant is a Distributor and its employees were engaged in its business across the Country, and were away from the factory/ establishment of the appellant for more than 7 months in a year. According to the appellant's G.O.Ms.No.2082 dated 29.08.1983 exempts the operation of the E.S.I. Act in respect of the persons employed in factories/ establishment of both public and private sectors, whose employees remained on tour for 7 months or more in a year.

10. On the other hand, it is the respondents/ E.S.I Corporation's case that the designation of the employees by the appellant as distributors was not supported by records and the said contention was raised only to avoid coverage under the E.S.I Act. The respondent denied that the appellant was entitled to the benefits of G.O.Ms.No.2082, Labour Department dated 29.08.1983. The respondent further stated that the order passed under Section 45-A of the E.S.I Act was based on the inspection report by the statutory Inspector of the respondents/ Corporation and the same was passed after following the due process of law. According to the respondent, the said G.O. could not be applied



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to extra-territorial areas, because admittedly, the appellant's/employees were engaged in different parts of the Country head-quartered in other States. The E.S.I. Court on a conspectus of the entire materials placed on record rejected the appellant's challenge to the Section 45-A order. Hence the present appeal.

11. The learned counsel for the appellant submitted that the E.S.I Court failed to note that the employees of the appellant were outside the factory/establishments in Chennai for over 7 months and therefore, no contribution could be demanded for those employees. The learned counsel further submitted that the impugned order passed under Section 45-A of the E.S.I Act, is against the inspection report of the respondents' own official. The learned counsel therefore prayed that the present appeal may be allowed.

12. The learned counsel appearing for the respondents/E.S.I Corporation, on the other hand, submitted that it is the appellants' own case that their employees were head quartered in different places, and therefore the E.S.I. Court is justified in its finding that, if the benefit of the said G.O. is extended to the appellant, it would amount to giving extra territorial effect to the G.O., which is not permissible. The learned counsel further contended that the E.S.I Act is a beneficial piece of Legislation, and in the absence of any evidence, that



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better facilities were extended by the appellant, there was no bar to claim contribution from the appellant.

13. I have heard the submissions of the learned counsel for the appellant and the learned counsel appearing for the respondents and perused the materials placed on record.

14. The short point that arises for determination in this appeal as borne out by the substantial questions of law framed is whether the benefit of G.O. passed by the Government of Tamil Nadu in G.O.Ms.No. 2082, Labour Department dated 29.08.1983, could be availed of by the appellant.

15. The Government of Tamil Nadu passed G.O.Ms.No.2082, Labour Department, dated 29.08.1983, exempting from operation of the E.S.I Act, certain classes of persons employed in the factories/establishments belonging to both private as well as public sectors. For better appreciation of the said G.O., it is useful to extract the relevant portion of the said G.O, which is as follows:-

"In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948) and in supersession of the Labour and Employment.



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Department Notification No.11(2)/IE/4266/79 dated the 26th June 1979 published at page 387 of Part II Section 2 of the Tamil Nadu Government Gazette dated the 13th July 1979, the Governor of Tamil Nadu hereby exempts from the operation of the said Act, the following classes of persons employed in the factories and establishments belonging to both the public sector and private sector.....

(c) Employees who remain on tour for seven months or more in a year; and

(d) Government employees who are on deputation or transfer but who enjoy the benefits under the State Government Rules.

(e) The exemption on hereby granted is subject to the following conditions, namely;-

(1) That the factories/ establishments shall maintain a register showing the name and designation of the exempted employee and the period of exemption and

(2) That the contributions paid in respect of the employer (both by the employer and the employees) for the periods prior to the grant of exemption under this Notification shall not be refunded and that the said employees shall continue to receive such benefits under the said Act to which they would be entitled on the basis of the contribution paid in respect of them."



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16. The G.O. under clause 'C' exempts employees who are on tour for 7 months or more in a year. It is therefore to be seen if the appellant's contention that its employees were on tour for more than 7 months in a year and as such it is entitled to the benefit of exemption under the aforesaid G.O. is factually established. The inspection report dated 11.04.2000 was marked for the period in question (i.e) from 7/1995 to 3/2000 as Ex.R.1 before the authority. It was recorded therein that 71 employees were engaged as Sales Representatives. The report clearly states that 71 employees were not covered under the E.S.I Act as the employees were Sales Representatives who were on tour for more than 210 days in a year. In Column Nos. 14 and 17 of the report, the Insurance Inspector recorded that the salary register, attendance register, G.L. etc. were admitted and the same is also reiterated in paragraph 17 therein.

17. Therefore, from a perusal of the Inspection report, it is clear that the Insurance Inspector was satisfied that the said 71 employees engaged, were not covered under the E.S.I Act.

18. In the order dated 19.06.2002 passed under Section 45-A of the E.S.I Act, the Deputy Director refers to the inspection report dated 11.04.2000 to infer that 71 employees were engaged by the appellant. The Deputy Director for reasons best known to him does not refer to the non-coverage of the 71



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employees in the inspection report. Clause(c) of the said G.O. states that the employees who remained on tour for 7 months in a year, are exempted from operation of the E.S.I. Act and therefore, the Insurance Inspector rightly found that 71 employees were not covered under the E.S.I Act. The Deputy Director has not given any reason for differing with the inspection report on coverage.

19. The exemption under the G.O. was with reference to the factories and not the employees, meaning that, if a factory is situated in Chennai and its employees were head quartered in different parts of the country, the employees of the factory would be exempted from operation of the E.S.I Act, if they remained on tour for more than 7 months in a year. Therefore, the fact that the employees were engaged in different parts of the country, would not make any difference, because, the exemption is granted only to the factory whose employees were outside for more than 7 months. Therefore, the reasoning of the E.S.I Court that, by exempting the employees, who were head quartered in other States under the G.O., extra territorial effect would be given to the G.O., is untenable.

20. The learned counsel for the respondents, on the other hand, relied on two Judgments to drive home the point that, when a factory has different



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branches in different States, unless and until it is established that better facilities are extended to its employees, the exemption cannot be granted. The learned counsel for the respondents referred to a Judgment of the Delhi High Court reported in *2006 SCC online Del 804* and also the Judgment of the Hon'ble Supreme Court reported in *2000(1)SCC 332*. In my view, both the Judgments relied on by the learned counsel for respondents are distinguishable on facts and hence they are not applicable to the facts of the present case.

21. It is seen that in the Judgment of the Delhi High Court, there was a clause in the G.O. therein, which stated that the exemption or renewal of exemption may not be recommended where there is no medical arrangement by the employer, and the employees were entitled only to the reimbursement of medical expenses. The other clause therein clearly states that the exemption under Sections 87 and 88 of the E.S.I Act could be granted only on satisfaction of the conditions stated therein. In the light of the G.O. before it, the Delhi High Court held the exemption under Section 88 of the E.S.I Act could be granted only to the class of employees who were in receipt of benefits substantially similar or superior to those available under the E.S.I. Act. But, in the case on hand, no such condition is stipulated in the said G.O dated 29.08.1983 and



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therefore, the contention of the learned counsel for the respondents and the reliance placed by him on the said Judgment of the the Delhi High Court is unsustainable.

22. Further, the facts in the Hon'ble Supreme Court Judgment relied on by the learned counsel for the respondents, is also distinguishable on facts. That was a case where the question raised was whether the notification issued in the state where the registered office was situate would automatically apply to its employees in the branch office in some other state, (i.e) Maharashtra. On the said facts, the Hon'ble Supreme Court held that the plea that the Bombay branch was separate or independent entity not controlled or supervised by its Registered Head Office in Andra Pradesh was taken only for the purpose of wriggling out of the sweep of the G.O. passed by the Andra Pradesh.

23. In the present case, it is nobody's case that the appellant has Branches in any other place except the Registered Factory at Chennai. Therefore the aforesaid Judgments are not applicable on the facts of the present case.

For the foregoing discussions, I find that the appellant is entitled to the benefit of the said G.O.Ms.No.2082, Labour Department dated 29.08.1983, and



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therefore, the order under appeal is set aside. The appeal is accordingly allowed.

There shall be no order as to costs. Consequently connected Miscellaneous
Petition is closed.

07.07.2023

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1.The Regional Director,
The Employees' State Insurance Corporation,
No.143, Sterling Road, Nungambakkam
Chennai 600 034.

2.The Recovery Officer,
Employees' State Insurance Corporation,
143, Sterling Road, Nungambakkam,
Chennai- 600 034.

Copy to



The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA,J.

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Pre-Delivery Judgment in
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Judgment Delivered on
07.07.2023