Judgment Reserved on :10.02.2023

Judgment Pronounced on :........02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.P.No.21730 of 2022
and
C.M.A.SR.No.136451 of 2022

Employees' State Insurance Corporation,
Rep.by the Regional Director,
143, Sterling Road,
Nungambakkam,
Chennai - 600 034. ... Appellant

vs.

Formix Industires,
Rep.by its Manager,
B-53, SIPCOT Industrial Estate,
Gummidipoondi - 601 201. ... Respondent

PRAYER: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 2006 days in filing the C.M.A.SR.No.136451 of 2022.

For Appellant : Mr.K.Prabakar

For Respondent : Mr.G.Derricle Sam

ORDER

The E.S.I Corporation has filed the above appeal with delay of 2006 days. The appellant herein has taken steps under the E.S.I Act and hence the respondent herein/Formix Industries represented by his Manager, E.I.O.P.No. 275/2015 before the designated E.S.I Court (Principal Labour Court Chennai) to declare that the respondent is a seasonal factory and therefore E.S.I Act is not applicable.

2. The main contention of the respondent before the Special Court Act (ESI Court) is that the prime concern of the company is at Kerala and is declared as a seasonal factory and it does not fall under the purview of the E.S.I Act and hence it was exempted from the purview of E.S.I Act. However, the appellant herein has taken steps after preliminary inspection and accordingly, filed the E.I.O.P.

3. During the trial, the respondent herein marked Exs.P1 to P5 and examined P.W.1 and for the E.S.I corporation, R.W.1 was examined and Exs.R1 to R19 were marked.

4. The Special Court E.S.I has framed the charges whether the petition factory is a seasonal factory as defined under Section 2(19-A) of the E.S.I.Act and whether the order under Section 45-A notice dated 8.9.2005 issued by the E.S.I is liable to be set aside.

5. Based upon the evidence, the Special Court has held that the respondent is entitled for declaration that its a seasonal factory and hence exempted from purview of the E.S.I Act.

6. Aggrieved against the said order dated 3.4.2017 the present C.M.A is filed, however with a huge delay of 2006 days.

7. Mr.Prabakar, learned counsel for the E.S.I Corporation could contend that though the main factory run by the respondent located at Kerala is exempted from purview of the E.S.I Act, it is only because of the fact that it is exclusively manufacturer of rubber. However, the Chennai unit namely the respondent herein situated at SIPCOT Industrial Estate Kummudipoondi, besides the manufacturer of rubber, process for tyre manufacturing is being taken as per Ex.R1-Inspection report and he has remitted necessary amount every year. Based upon the remittance made

by the respondent, the E.S.I corporation has also granted a) cash benefits and b)medical benefits to the employees of the company in view of the representation made by the communist union of the second respondent as containing under Ex.R2 and Ex.R3 and hence, after few years, he has made a representation for claiming exemption and refund of the amount and hence, matter was referred to the committee as to the total benefits derived by the employees employed by the respondent industry herein.

8. On the above two points, namely (i) cash benefits given to the employees of the respondent industry and (ii) medical benefits extented to them for treatment at E.S.I hospital and mediclaim given to the E.S.I hospital and dispensary located in various parts of the Chennai and therefore, while taking these informations across the Chennai and other parts of the State, the collection of details were delayed and hence, the appeal could not be filed against the order passed by the E.S.I Court. Besides, also draw my attention to the affidavit filed by the officer regarding misplacement of file and tracing of the file and other administrative reasons.

9. Per contra, the learned counsel for the respondent could

contend that the delay is large.

10. Admittedly, the employee employed by the respondent industry has taken cash benefits and medical benefits from E.S.I corporation and also given treatment at E.S.I hospital and medicines were also been supplied to the E.S.I dispensaries and hence, whether the amount remitted by the respondent industries are to be returned or not involves necessary collection of details and hence, I find that the reasons assigned by the appellant E.S.I corporation appears to be just and reasonable and they have been prevented from sufficient costs for the delay. Since there is a delay of 2006 days, I am inclined to allow the petition on payment of costs of Rs.3000/-(Rupees Three Thousand only) to the counsel for the respondent. Time for payment of cost is within 15 days from the date of receipt of a copy of this order. Memo to be filed.

11. On payment of cost and production of memo, the Registry is directed to number the Civil Miscellaneous Appeal, if it is otherwise in order and post the same for admission.

12. C.M.P.No.21730 of 2022 is allowed on the above terms.

.......02.2023.

RMT.TEEKAA RAMAN,J.,

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<u>Pre-Delivery order in
C.M.P.No.21730 of 2022 and
C.M.A.SR.No.136451 of 2022</u>

......02.2023