BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.07.2023

PRONOUNCED ON: 29.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.205 of 2019
and
C.M.P.(MD)No.1770 of 2021

1.The Regional Director,
Employees' State Insurance Corporation,
147, Sterling Road,
Nungambakkam,
Chennai – 600 034.

2.The Joint Regional Director,
Employees' State Insurance Corporation,
Salai Street, Vannarapettai,
Tirunelveli – 627 003. ...Appellants

/Vs./

1.Muruga Home Industries,
Rep. by its Managing Director.

2.The State of Tamilnadu,
Rep.by its Principal Secretary to Government,
Labour and Employment (LI) Department,
Secretariat,
Chennai – 9. ...Respondents

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 15.02.2018 passed in W.P.(MD)No.3365 of 2015 and allow the writ appeal.

For Appellants : Mr.I.Pinaygash

For Respondents : Mr.M.Jerin Mathew (R1)
Mr.K.S.Selvaganesan (R2)
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.)**

The first respondent in writ appeals is the writ petitioner. They had sought a quash of Government Orders rejecting their request for grant of exemption under the provisions of the Employees' State Insurance Act, 1948 (in short 'Act') for various periods.

2. The first respondent / writ petitioner are beedi manufacturers and had challenged the orders on various grounds which have been confirmed in favour of the first respondent / writ petitioner by order dated 15.02.2018 allowing the writ petitions.

3. The Act provides for the grant of exemption under Section 87 thereof in the following terms:

> "*87.Exemption of a factory or establishment or class of factories or establishments.- The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or clas of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time:*
>
> *[Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:*
>
> *Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.]*"

4. With effect from 01.06.2010, Section 91A of the Act came to be inserted in the Act, which provided that grant of exemption must be prospective only, with effect from such date as may be specified therein. Section 91 A reads as follows:

91-A. Exemptions to be either prospective or retrospective.-Any notification granting exemption under section 87, section 88, section90 or section 91 may be issued so as to take effect prospectively on such date as may be specified therein.

5. In the present case, the details of periods for which exemption has been sought and the dates on which the exemption applications have been filed have been tabulated qua writ petitioner as follows:

Writ Appeal No.	Application Date	Period for which exemption was sought
W.A.(MD)No.205 / 2019 relating to Muruga Home Industries	20.06.2011	01.01.2011 to 31.12.2011
	14.02.2012	01.04.2012 to 31.03.2013

6. The Act is categoric to the effect that consideration for exemption will only be in circumstances where the employer is in a position to establish that the facilities/benefits that have been offered by it are either substantially similar or superior to the benefits provided under the Act. That apart, the second proviso to Section 87 of the Act also provides that the application for renewal is to be made three months before the date of expiry of the exemption period and a decision thereupon is to be taken by the Government within two months of receipt of the application.

7. In the instant cases, writ petitions have come to be allowed by the learned Judge on 15.02.2018 by way of a common order. In doing so, the Writ Court follows the ratio of an order passed on 21.06.2011 in W.P.(MD)No.17572 of 2010 etc. batch. A copy of that order has been circulated.

8. A perusal of that order reveals that it disposes multiple writ petitions filed by the Cooperative Societies challenging refusal of their request for exemption. The learned Judge has accepted the prayer for grant of exemption on the ground that there was a clear discrimination between grant of exemption in the case of some societies leaving out some other societies.

9. That observation has to be seen in the context of the finding at para 17 of that order, wherein the learned Judge notes that all the District Cooperative Milk Producers Unions were functioning under the same enactment, under the same Management and with the same service conditions. In such circumstances, granting exemption to one set of

societies and refusing exemption to other set, both identically placed, would be discriminatory and violative of Article 14 of the Constitution, smacking of arbitrariness.

10. In the present case, we are unaware as to whether the service conditions in all beedi manufacturing companies are the same. There is also no material placed before the Court to indicate identity in the work conditions or the benefits that are provided by the different beedi manufacturers.

11. Thus, while we are in agreement with the ratio of decision dated 21.06.2011 to the effect that where identity of service conditions, terms and employee benefits have been established, the grant/rejection of exemption must be consistent across all such employers. Since such identity has not been established in the present case, reliance upon order dated 21.06.2011 is of no benefit to the writ petitioner in the absence of the factual particulars being available before the Court.

12. The second ground upon which the writ petitions have been allowed is that there is no special or new reason that has been cited by the authorities in rejecting the exemption sought. The grant of exemption is specific to a year and thus, exemption must be sought, considered and either granted or rejected for every succeeding year.

13. We find however, that in practice, this is not being followed as the application is in respect of multiple years and there is no continuity in the periods. That apart, it cannot be assumed that conditions of service and employee benefits would remain consistent from year to year.

14. Needless to say if the service conditions and benefits remain the same, then the reasons for rejection must be specific to the applications. However, in the present case, there are no averments in the writ affidavits to the effect that service and employee benefits remain consistent from year to year.

15. Thus, in the absence of the material evidence to establish this factual position, this Court, particularly sitting in writ jurisdiction, would not be in a position to return a finding that the grant of exemption in one year would automatically entitle the employer to exemption for the succeeding period as well.

16. No doubt as a general proposition, the grant of exemption must be seamless, across a period of time. However, this is entirely dependent on the statutory conditions being satisfied across that duration of time as well. This fact not having been established by the writ petitioners, we cannot accede to the position that grant of exemption for the subsequent period would result in automated grant of exemption for the period in consideration as well.

17. The Appellant has cited the decisions in:

(i)Kajah Enterprises Private Limited vs. The State of Tamil Nadu [W.A.(MD)No.911 of 2010 dated 18.03.2021];

(ii)*Everett India Pvt. Ltd., vs. State of West Bengal* [2002 2 Llj 477 (Calcutta)];

(iii)*Madras Race Club vs. The Secretary to Government and others* [W.P.No.17364 of 1999 dated 26.11.2008];

(iv)*M/s.Thanjavur West Sarvodaya Sangh vs. State of Tamlil Nadu and another* [W.P.No.3666 of 2010 dated 24.02.2010].

18. In *Kajah Enterprises*'s case, the Division Bench reversed the order of the learned single Judge holding that a conjoint reading of Sections 87 and 91(A) of the Act can only mean that exemption can be sought for only one year at a time whether prospective or retrospective. But the Company had sought exemption belatedly and retrospectively for 17 years. The writ appeal filed by the Employees State Insurance Corporation was allowed. The learned Single Judges in the aforesaid writ petitions have also taken a similar view. In *Everett India*'s case, the Calcutta High Court has also been persuaded to take a similar view.

19.The respondents have referred to the judgment in:

(i)Employees State Insurance Corporation and Others vs. Jardine Henderson Staff Association and Others [2006 AIR SC 2767].

20. The Hon'ble Supreme Court considered the appeal filed by the Employees State Insurance Corporation (ESIC) against the Judgment of the Calcutta High Court. The limited purpose for which the respondents rely on the judgments is on the ground of undue hardship that weighed with the Court. The Bench, in consideration of the tremendous hardship that would be caused if the arrears are directed to be paid, had concluded that the High Court was fully justified in not asking the parties to bear the liability for the past periods.

21. The Court also notes that medical facilities were not availed by the employees though, the employer had, based upon interim orders of the High Court, provided the same. At para 37, they state as follows:-

> *"The High Court, in our opinion, while disposing of the matter has taken a just, pragmatic, fair and judicious view after considering all the equities and facts and circumstances of the case. Extreme hardship might have been caused to both the employer as well as the employee since no medical facilities admittedly have been availed by the workmen from ESIC and the employer had provided medical facilities to the workmen as per the Court orders and in view of the interim order also had paid medical allowances."*

22. In light of the discussion as above, we are of the view that the impugned order of the writ Court cannot be sustained and hence, allow the writ appeal. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.,] & [R.V.J.,]
29.09.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
sm

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

sm

TO:

The Principal Secretary to Government,
Labour and Employment (LI) Department,
Secretariat,
Chennai – 9.

Judgment made in
W.A.(MD)Nos.205 of 2019

Dated:
29.09.2023