BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.846 of 2021
and
C.M.P.(MD)No.7858 of 2021

M/s.Mayur Stones,
(Formerly Known as Madura Stones),
Rep.by its Proprietor S.Shailesh,
118/2, Sivagangai Main Road,
Varichiyur, Madurai District. ...Appellant/Petitioner

Vs.

Employees State Insurance Corporation,
Sub-Regional Office
4th Main Road,
K.K.Nagar, Madurai-625 020,
represented by its Assistant Director. ...Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 82 of the ESI Act, 1948, to set aside the order and decree dated 22.07.2021 made in E.S.I.O.P.No.75 of 2009 on the file of the ESI Court (Labour Court), Madurai.

For Appellant : Mr.M.Elanchezhian
For Respondent : Mr.I.Pinaygash

JUDGMENT

Challenge has been made to the order passed by the ESI Court in E.S.I.O.P.No.75 of 2009, dated 22.07.2021.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)The appellant is the tiny unit manufacturing granites from raw stones in the name and style of Madura Stones now changes as Mayur Stones. An order under Section 45-A of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act' for the sake of brevity), has been passed fixing the contribution value of Rs.1,38,164/- for the period from 12.06.2007 to 03.07. 2008 as per the Act. The said order has been challenged before the ESI Court, mainly on the ground that the contribution is not payable to 11 employees, since they come under the category of exempted employee. According to the petitioner, those employees have been receiving more than Rs.10,000/- as salary. Therefore, they will not come under the purview of the Act. However, the ESI Court did not agree with the appellant's submission and rejected the petition. Challenging the same, the present appeal is filed.

4.The learned counsel for the appellant contended that as per Section 2 (9)(iii)(b) of the Act, any person so employed, whose wages exceed Rs.10,000/- at the relevant point time, may not come within the definition of the employee. According to him, as per the Central Rule, 1950 for the period of 2006-2008, the amount of Rs.10,000/- per month has been fixed as wage to the employees. Therefore, any amount paid over the said amount, cannot be brought under the purview of the Act to seek contribution.

5.He further contended that during inspection, the Inspector had verified all the documents and found that 11 employees were receiving the salary of more than Rs.10,000/-. When the inspection report indicates that all the documents have been verified, the question of directing the petitioner to produce the salary register and other documents once again, does not arise at all. The original authority ignored the inspection report and passed the order on the basis of total wages that has been paid to the employees. Even assuming that the salary register has not been established, the contribution at the most would be calculated only to a sum of Rs.9,90,000/-, whereas, towards the total salary of Rs.21,25,600/- the contribution amount is calculated.

6.The learned counsel for the respondent submitted that the petitioner has failed to prove that the employees were paid a sum of Rs.11,000/- by producing relevant materials. The petitioner paid the said salary only through vouchers in order to evade from contribution under the Act. Hence, the assessment and the order of the ESI Court is valid and legally sustainable.

7.In view of the above submission, now the points arise for consideration in this appeal are:

(1) Whether the findings of the Court below is sustainable in law by affirming the order passed by the respondent under Section 45A of the ESI Act, 1948 when the employees have been exempted as per Section 2(9)(iii)(b) of the ESI Act?

(2)Whether the findings of the Court below is sustainable in law holding that the appellant is liable to pay to its 11 employees whose wages / salary are more than Rs.10,000/- per month when the same falls under the exempted wages category as per Rule 50 of Employees' State Insurance (Central) Rules, 1950?

(3)Whether the act of the respondent herein in determining the contribution of the employees' wages /salaries which were more than Rs.10,000/- per month at the relevant point of time is correct when the Act debars the same?

8.Heard the learned counsel appearing on either side and perused the materials placed on record.

9.Challenge has been made as against the order passed under Section 45-A of the Act directing the appellant to pay the contribution on 11 employees. The main contention of the learned counsel for the appellant is that the said 11 employees fall under the category of exempted employee and they will not fall within the ambit definition of employee as per Section 2(9)(iii)(b) of the Act, since their wages exceed Rs.10,000/-. According to the appellant, the inspection report also clearly shows that 11 employees are receiving more than Rs.10,000/- per month as salary.

10.Perusal of the entire inspection report shows that though the Inspector had verified certain documents i.e., ledgers and vouchers, and recorded as if 11 employees were receiving more than Rs.10,000/- as wage at the relevant point of time, the fact remains that the Inspecting Authority has not accepted the same as final. In fact, he had raised a doubt regarding payment of wages to the employees, as there was no pan cards of the said employees whatsoever available. Even though the appellant was given an opportunity of personal hearing to produce documents to substantiate the claim that 11 employees come under the exempted category, the appellant has not produced any documents. Hence, the Original Authority has passed the order under Section 45-A of the Act directing the appellant to pay the contribution of Rs.1,38,164/-, which was arrived on the basis of the total salary of Rs.21,25,600/- paid by the appellant. The said order was confirmed by the ESI Court.

11.It is relevant to note that the person seeking specific exemption or the benefit of legislation, has to show that proper salary has been paid and relevant records have been maintained. Despite an opportunity of personal hearing was given to the appellant by the Original Authority, no documents, particularly wage register, whatsoever were seen the light of the day. Even before the ESI Court, no documents have been produced. Therefore, merely on the basis of the voucher and certain some other documents said to have been verified by the Inspecting Authorities, it cannot be concluded that the employees have actually received more than Rs.10,000/- as wages at the relevant point of time.

12.The person seeking exemption provided under law, has to satisfy the Court by producing relevant records. Without producing any relevant materials, merely on the basis of the inspection report, the appellant as a matter of right, cannot seek exemption. When the legislature grants exemption, to avail such exemption proper records should be maintained and produced. Being a factory, it is incumbent upon the appellant to maintain wage register. But, the wage register has not been produced before the ESI Court or the original authorities to substantiate the submission of the appellant. Therefore, merely on the basis of the inspection report, this Court is unable to countenance the contentions of the appellant.

13.At this juncture, the learned counsel for the appellant submitted that contribution has been calculated on the basis of the total salary of Rs.21,25,600/-, which is not valid in the eye of law. Even assuming that the appellant is not entitled to seek exemption, the contribution has to be paid only to a sum of Rs.10,000/- and not beyond that. But the contribution amount has been calculated to the entire salary.

14.With regard to the above submission, the learned counsel for the respondent fairly submitted that there is some differences in the calculation. According to the learned counsel for the respondent, only a sum of Rs.1,14,400/- alone would be the contribution, whereas the order of the original authority reflects that a sum of Rs.1,38,164/- has to be paid by the appellant as contribution.

15.Recording the submission made by the learned counsel on either side, the appellant is directed to pay a sum of Rs.1,14,400/- (Rupees One Lakh Fourteen Thousand and Four Hundred only) as contribution with applicable interest as per law within a period of fifteen days from the date of receipt of a copy of this judgment. If the contribution amount has already been deposited by the appellant, that would be adjusted and the remaining amount should be paid either to the appellant or by the appellant within a period of one month from the date of receipt of a copy of this judgment.

16.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The ESI Court (Labour Court), Madurai.

2.The Assistant Director,
The Employees State Insurance Corporation,
Sub-Regional Office 4th Main Road,
K.K.Nagar, Madurai-625 020,

3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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C.M.A.(MD)No.846 of 2021

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