BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2023

PRONOUNCED ON : 12 .07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.27 & 28 of 2014
and
MP(MD).Nos. 1& 1 of 2014

Lambodhara Textiles Limited
Represented through its Factory Manager
826, Thazhaiyuthu
Palani Taluk
Dindigul District .....Appellant in both appeals

Vs.

The Deputy Regional Manager
Employees State Insurance Corporation
1B, Old Post Office Street
Tallakulam
Madurai 625 002 ...Respondent in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 82(2) of the Employees State Insurance Act 1948 to set aside the judgement and decreetal order of the Employees State Insurance Court (Labour Court), Madurai in ESIOP.Nos.54 & 55 of 2001 dated 29.04.2013 and allow the appeals.

For Appellant : Mr.V.O.S.Kalaiselvam
in both the appeals

For Respondents : Mr.P.Ganapathysamy
in both the appeals

COMMON JUDGMENT

The above appeals have been filed by the employer challenging the orders passed by the Labour Court, Madurai in ESIOP.Nos.54 and 55 of 2001 on 29.04.2013.

Factual Matrix:

2.The respondent mill was originally owned by one Alamelu Textiles and they have borrowed a loan from TIIC. Due to default in payment of the instalment amount, the mill was brought to auction which was purchased by the respondent management on 27.05.1994. On 25.11.1994, the Inspector of E.S.I.Corporation had inspected the Unit and found that more than 11 employees were working for wages. After examining the report, the corporation felt that it is coverable under the E.S.I.Act and allotted a code number. A notice under Form C18 was issued on 31.12.1998 demanding a sum of Rs.11,830/- for the period covering September 1994 to March 1996. Another Form C18 notice was issued on 27.05.1999 demanding a sum of Rs.3,36,300/- for the period covering between April 1996 to March 1997.

3.For the C-18 notice dated 31.12.1998, an enquiry is said to have been conducted on 11.02.1999 and on 15.04.1999. Since the employer has not cooperated and produced the records, an order under Section 45A of the E.S.I.Act was passed on 25.04.2001/ 08.05.2001 confirming the payment of Rs.11,830/- for the said period.

4.For the C-18 notice dated 27.05.1999, an enquiry was said to have been conducted on 01.07.1999 and on various dates till 15.11.2001. As per order under Section 45-A of the Act, the employer abstained on all the above occasions. Therefore, the corporation had passed an order on 26.04.2001/08.05.2001 confirming the demand of Rs.3,36,300/- for the period covering April 1996 to March 1997.

5.Challenging these two 45-A orders, the management had filed ESIOP.Nos. 54 and 55 of 2001 before the Labour Court, Madurai. Among other things, the management had contended that they have started manufacturing process only in the year 1997 and therefore, 45-A order is not legally sustainable. The management had further contended that they have not utilized power and the employees were less than 20 and the Act is not applicable to them. They have further contended that for the period covering from 1994 to 1996, the order has been passed on 08.05.2001 and therefore, it is barred by limitation. It was the further contention of the management that the area in which the petitioner mill is situated is not covered under E.S.I.Act.

6.In ESIOP.No.55 of 2001, the management had contended that a visit notice was issued on 18.02.1999 demanding a sum of Rs.6234/- and they have paid the same. For the same period again a sum of Rs.2,26,780/- has been demanded. They have further contended that no proper opportunity was given to them to produce the records. The allegation in the order that they have not produced the records is not correct, in view of the fact that on every occasion when they produced the records, they were directed to arrange the records and place it before the management.

7.The management had further contended that without considering the explanation offered by the management, the corporation had proceeded to pass the orders. They have further contended that the alleged wages included the wages paid to the managerial staff who are excluded from the purview of the E.S.I.Act. The management had further contended that in ESIOP.No.55 of 2001, the contribution has been demanded for conversion charges – expenses and reeling also. These works are out sourced and no wages are being paid by the management. They have further contended that the loading and unloading charges cannot be included in the term wages, in view of the fact that the loadmen are outsiders and they work with different employers and different places. They have also challenged L.F.Nos.100 to 222 which reflects the cost of spare parts meant for machineries. They have further challenged LF.No.42 on the ground that it reflects cotton shifting charges.

8.On the above said grounds, the Management had challenged both 45-A orders before the Labour Court, Madurai.

9.Findings of the Labour Court in ESIOP.No.54 of 2005:

(i).In ESIOP.No.54 of 2005, the management has not placed on record the exact date of functioning of the mill after the cleaning and repairing works were over. The management has not placed any positive evidence with regard to the commencement of operation in the mill and therefore, the mill was running from the year 1994 onwards.

(ii).Though the management has contended that the salary of the managerial staff has also been included, the management has not produced any record to show that those wages were included.

(iii).The management had contended that the conversion charges and cotton conversion charges cannot be included for contribution on the ground that they are being out sourced. The management had mainly relied upon Exhibits P6 and P7 which were not produced before the authorities. Moreover those exhibits are nothing but a file containing loose sheets for which no creditability could be attached. No records have been produced relating to the out sourcing of cotton conversion work.

(iv).The claim may by the corporation in respect of cotton purchase expense, stores, spares and computer expenses are not proper and tenable and no contribution is liable to be paid.

10.Based upon the above said findings, the E.S.I.Court had partly allowed the petition with regard to the claim of contribution in respect of cotton purchase expenses- others (Ledger Folio No.222) and stores, spares and computer (Ledger Folio No.222). In other respects, the petition was dismissed.

11.Findings of the E.S.I.Court in ESIOP.No.55 of 2001.

(i).The Labour Court was pleased to confirm all the findings relating to the commencement of operation, managerial staff and the creditability of Exhibits P6 and P7 vouchers.

(ii).The Labour Court had rejected the contention of the management with regard to the conversion and reeling charges on the ground that no document has been placed relating to the out sourcing of the said operation. As far as the other heads are concerned, the E.S.I.Court rejected the same on the ground that no documents have been produced to establish that the contribution demanded by the corporation is not legally sustainable.

(iii).The Labour Court further rejected the claim of exemption with regard to the apprentices on the ground that the management has not produced any records to show number of apprentices engaged by them, the alleged stipend paid to them, the period of training and evaluation. Based upon the said findings, the Tribunal had dismissed ESIOP.No.55 of 2001 in entirety.

12.Challenging the above said orders, the management had filed the present appeals.

13.The learned counsel appearing for the appellant had reiterated all his contentions which were made by him before the Labour Court and also the grounds raised before this Court including the substantial questions of law.

14.The primary contention of the learned counsel appearing for the appellant is that though the mill was was purchased in May 1994, and operation was started only in September 1997 and therefore, the demand made by the authorities for the period prior to September 1997 is not legally sustainable.

15. A C.18 notice has been issued by the authorities on 27.05.1997 for the period covering April 1996 to March 1997 demanding a sum of Rs.3,36,300/-. For the said C-18 notice, a reply has been submitted by the management. In the 4^{th} page of the said reply, the management has categorically admitted that the mill commenced their operations during the year 1994-1995. If the operations have not been commenced before September 1997, the burden is entirely upon the management to establish the said fact. The management could have produced the electricity consumption bills to establish that there was no operation between 1994 to 1997. In view of the admission in the reply to

C-18 notice and non production of any positive evidence with regard to commencement of the operation, this Court is of the opinion that the Labour Court was right in arriving at a finding that the operations have commenced from September 1994.

16.Though it is contended on the side of the management that the salary of the managerial staff were also included while calculating wages, no records have been placed on the side of the management to establish that the managerial staff have also been included. In fact, Exhibits P6 and P7 are some loose sheets which do not carry any value and they are not the ledger book or wages, maintained in the regular course of business. These document in fact have not been placed before the authorities having been given so many adjournments. Other than Exhibits P6 and P7, the management has not chosen to place any record to show outward and inward movement of the goods in order to establish the fact that the cotton conversion works were out sourced.

17.The further contention of the appellant that they are not using power and therefore, even as per the visit notice, 11 employees alone were employed and therefore, the mill cannot be covered under E.S.I.Act. It is a mill and without power it cannot be operational. Therefore, if number of persons employed is 10 or 11, certainly they are coverable under the Act. As pointed out in the preceding paragraph, the management has not produced any record to show their electricity consumption charges during the period between 1994 – 1997 to establish that the mill was operational without power.

18.Though the management has contended that the mill is located in non coverage area, they have paid the contribution for the period between 31.03.1998 to 30.09.1998. Therefore, it is evident that the mill falls within the coverage area.

19.It is the further contention of the learned counsel appearing for the appellant that the stipend paid to the apprentices cannot be counted for the purpose of calculating wages or contribution. As rightly pointed out by the Labour Court, the management has not come forward to produce any records with regard to the number of apprentices or the certified standing order of their mill to establish that they are empowered for appointing apprentices. It is the contention of the management that the mill was not operational between 1994 to 1997. It is not known how the apprentices were engaged for during the said period. The Labour Court has properly appreciated the order passed by the corporation in

Paragraph Nos.13 and 14 of the order in ESIOP.No.54 of 2001 and Paragraph Nos. 12 and 15 of ESIOP.No.55 of 2001. The same substantial questions of law have been framed in both the appeals.

20.In view of the above said deliberations, all the substantial questions of law are answered as against the appellant. The orders of the Labour Court, Madurai in ESIOP.Nos.54 and 55 of 2001 are herein confirmed. Both Civil Miscellaneous Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

12.07.2023

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

1. The Labour Court
Madurai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-delivery Common Judgement made in
C.M.A(MD)Nos.27 & 28 of 2014
and
MP(MD).Nos. 1& 1 of 2014

12.07.2023