



C.M.A. (MD)No.208 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)No.208 of 2017

M/s Coral Land & Building Promoters Pvt., Ltd.,
B 20/5, N.G.O.B Colony,
Palayamkottai, Tirunelveli 627 007
through its Managing Director

...Appellant/ Petitioner

Vs.

1.Employees' State Insurance Corporation,
Sub Regional Office (Tirunelveli),
Salai Street, Vannarpettai,
Tirunelveli -3, Tirunelveli District,
through its Joint Director

2.The Recovery Officer,
Employees' State Insurance Corporation,
Sub Regional Office (Tirunelveli),
Salai Street, Vannarpettai,
Tirunelveli-3, Tirunelveli District.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 82(2) of the Employees' State Insurance Act, 1948, against the fair and decretal order of the Employees' State Insurance Court/Labour Court, Tirunelveli in E.S.I.O.P.No.5 of 2016 dated 19.10.2016.

For Appellant : Mr. P.Rajesh

For Respondents : Mr.P.Ganapathisamy



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JUDGMENT

The present appeal has been filed by the employer challenging the dismissal of the ESI petition by the Labour Court and confirming the order passed by the ESI Corporation under Section 45 A of the ESI Act.

2. The petitioner is running a construction company, which is the Sub-Contractor of L&T company. A notice was issued to the appellant on 26.06.2014 to show cause why action should not be initiated for non-payment of contribution. After receipt of show cause notice, some authorised persons from the appellant/company had appeared for personal hearing, but they have not produced the records. Therefore, the Corporation had proceeded to pass an order under Section 45 A of the Employees' State Insurance Act (hereinafter referred to 'Act' for brevity) on 07.07.2015 raising an amount of Rs.1,12,613/- for the period covering September-2012 to May-2014. This order was challenged by the employer by filing ESIOP.No.5 of 2016 before the Labour Court, Tirunelveli. The said petition was dismissed by the Labour Court. Challenging the same, the present appeal has been filed.



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3. According to the learned counsel appearing for the appellant/company, they are Sub-Contractors of L&T Company and they were under the impression that ESI contribution would be paid by the L&T company themselves. They further contended that all the employees alleged to be covered under the Act are drawing more than Rs.15,000/- and hence, they are exempted from the provisions of the Act.

4. Per contra, the learned counsel appearing for the ESI Corporation contended that the appellant/employer himself has filed Form-01 before the authorities indicating the name of the 10 employees, who are drawing a sum of Rs.10,000/- only. Therefore, at no stretch of imagination, it can be construed that the employees were drawing a salary more than Rs.15,000/- attracting the exempting from the ESI Act. He, therefore, prayed for dismissal of the appeal.

5. I have carefully considered the submissions made on either side and perused the records.

6. It is not in dispute that the appellant/company has been allotted a separate Code under the ESI Act. The company has also submitted Form-01



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before the authorities indicating that there are 10 employees working in the company, who are drawing salary less than Rs.10,000/-. Therefore, the contention of the learned counsel for the appellant that these employees are drawing more than Rs.15,000/- salary and they are exempted from the purview of the Act is contrary to the declaration Form submitted by the appellant himself. That apart, the appellant had further contended that they were under the impression that their main contractor, namely, L&T company would clear the ESI contribution. However, a perusal of Ex.P1 and Ex.P.4, which are agreements between the L&T company and the appellant/company would reveal that as per the said agreement, the appellant/company has to pay the contribution and thereafter, get it reimbursed from the L&T company. Therefore, it is clear that the liability is cast upon the appellant/company to pay the contribution under the ESI Act. Therefore, both the grounds raised by the appellant/company are not sustainable in law. I do not find any infirmity or illegality in the order passed by the ESI Court in dismissing the petition. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

20.03.2023

NCC : Yes/No

Index : Yes/No

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- 1.The Employees' State Insurance Court/Labour Court, Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

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