



C.M.A(MD)No.664 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.664 of 2017

and

C.M.P(MD)No.6891 of 2017

Muruga Home Industries,
(Previously Tirunelveli Beedi Industries),
6/385, Punnaiyapuram,
Madurai-Tenkasi Road,
Puliyankudi – 627 853.

... Appellant/Petitioner

Vs.

1.E.S.I.Corporation,
Sub-Regional Office (Tirunelveli),
Salai Street, Vannarpettai,
Tirunelveli – 627 003,
Represented by its Joint Director.

2.T.Arunachalam

3.K.K.Raghi

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 (2) of the Employee's State Insurance Act 1948, to set aside the order, dated 03.05.2017 passed by the Labour Court, Tirunelveli in E.S.I.O.P.No.3 of 2017 in so far it relates to the sustaining the demand for the period from



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01/12 to 03/13 and allow the E.S.I.O.P filed by the appellant as prayed for.

For Appellant : Mr.M.Jerin Mathew

For R1 : Mr.P.Ganapathisamy

For R2&R3 : No Appearance

JUDGEMENT

The present appeal has been filed by the employer challenging an order passed by the Labour Court directing the employer to pay contribution for the period covering January 2012 to March 2013.

2. It is not in dispute that one Tirunelveli Beedi Industry was covered under the Employee's State Insurance (hereinafter referred to as E.S.I) Act and it got merged with the appellant industries with effect from 01.04.2013. A show cause notice was issued by the E.S.I corporation on 25.08.2014 seeking contribution for the period covering between 01.06.2010 to 31.07.2014. The appellant industries submitted their reply on 15.11.2014 disputing their liability to pay the contribution. Partly accepting the contentions of the employer, an order was passed by the E.S.I corporation under Section 45-A of the E.S.I Act on 12.01.2015



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directing them to pay the contribution for the period covering January 2012 to November 2013.

3. This order of the E.S.I corporation was challenged by the industry before the E.S.I Court, Tirunelveli. The E.S.I Court was pleased to reduce the period of contribution to January 2012 to March 2013 calculating the quantum at Rs.96,525/- (Rupees Ninety Six Thousand Five Hundred and Twenty Five only). The industry, not being satisfied with this order, has filed the present appeal.

4. According to the learned counsel appearing for the appellant, originally they have sought for exemption from payment under E.S.I Act for the relevant period. The said exemption was rejected by the Government by way of G.O.Ms.No.348 and 165, dated 14.11.2011 and 26.04.2012. The said order was challenged by the industries before the learned Single Judge of this Court in W.P(MD)No.3365 of 2015. The learned Single Judge was pleased to allow the writ petition on 15.02.2018 on the ground that the Government has not assigned any special reason for refusing exemption. When the writ petitioners were granted exemption for a period subsequent to the one in dispute, there



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was no reason for rejecting the exemption for the previous periods. This order of the learned Single Judge was challenged by the E.S.I Corporation in W.A(MD)No.205 of 2019. The Division Bench was pleased to admit the writ appeal and has granted interim stay on the ground that the question of granting exemption with retrospective effect will not arise. Admittedly, the said writ appeal is still pending.

5. The only ground on which the present appeal is being filed by the industry challenging the demand of contribution is that they are exempted from payment of contribution for the relevant period. However, it should be seen from the records that their request for exemption has been rejected by the Government. Though the learned Single Judge of this Court has allowed the writ petition, the same has been stayed by the Hon'ble Division Bench. Hence, as on today, there is no exemption to the appellant industry from payment of E.S.I contribution. That being the position, there are no grounds to challenge the order passed by the E.S.I Court, Tirunelveli.

6. In view of the above said facts, the present appeal stands dismissed with liberty to the appellant either to seek refund or adjust the



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same in future contributions, in case, if he succeeds before the Division Bench in W.A(MD)No.205 of 2019.

7. With the said observations, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.03.2023

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

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To

- 1.The Labour Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.

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Order made in
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14.03.2023