



C.M.A(MD)No.680 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **09.01.2024**

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THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.680 of 2021

and

C.M.P.(MD)No.6325 of 2021

M/s.Lakshmi Match Works through
its Proprietor G.Gopalakrishnan,
No.1/17B, Poovanathapuram,
Sivakasi West, Virudhunagar District.

... Appellant

Vs.

The Deputy Director,
Employees State Insurance Corporation,
Panchdeep Bhavan,
4th Main Road, K.K.Nagar, Madurai 20.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82 Sub
Section 2 of the Employees State Insurance Act, against the fair and
decreetal order, dated 17.09.2019, passed in ESIOP No.173 of 2017 on
the files of the Learned ESI Judge, ESI Court, (Labour Court) Madurai.

For Appellant : Mr.R.Saravanan
For Respondent : Mr.P.Ganapathisamy



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JUDGEMENT

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This Civil Miscellaneous Appeal is filed against the order passed in ESI Court, (Labour Court) Madurai.

2. The appellant is a proprietorship firm. The ESI authorities had passed an order directing the appellant herein to pay the contribution amount of Rs.47,190/- for the period from 4/2009 to 9/2009 and for a period from 2/2009 to 3/2009 to the tune of Rs.14,888/-, totally the appellant is liable to pay Rs.62,178/-. Aggrieved over the said order, the appellant herein had preferred ESI OP No.173 of 2014. After analysing the evidence marked as Ex.P1 to P6 and oral evidence of PW 1, the ESI Court has confirmed the order passed by the ESI authority.

3. The contention of the appellant proprietorship firm is that the said unit was closed for which they rely on the proceedings passed by the District Revenue Officer, dated 30.07.2009. The appellant is a Match Box Manufacturing Factory, they are bound to obtain license from the District Revenue Officer for running the factory. Since they have submitted before the authority that they are inclined to close the



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manufacturing unit, accepting the contention of the appellant and also based on the report of Special Tahsildar, the appellant was allowed to close the unit and the License No.64 of 2002 was cancelled with effect from 31.12.2008. However, the respondent ESI Corporation is relying on the certificate issued by the Deputy Commercial Tax Officer, Sivakasi, wherein it is stated that the dealer has closed a business with effect from 31.03.2014. The respondent further submitted that the appellant had deposed he do not remember the date of closure and hence it is evident that the appellant has not proved his case through oral evidence.

4. After hearing the arguments this Court is of the considered opinion that any match box manufacturing unit cannot run without permission from the District Revenue Officer and the unit cannot produce any matches without permission from fire department. If any unit is running without license, then it is liable for criminal prosecution. The evidence of Commercial Tax Department cannot be relied on since even if the unit is closed the Commercial Tax Department would allow to cancel the assessee's license after completion of assessment. In the present



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case the unit was closed as per Fire Department on 31.12.2008 and after completing the assessment the Commercial Tax Department had issued closure certificate only on 31.03.2014. Hence the evidence of the District Revenue Officer (Fire Department) has more value than the evidence of Sales Department.

5. However the learned Counsel appearing for the ESI Corporation submitted that the unit may be closed but the regular employees like Watchman and other administrative department would be engaged until 2014. Therefore, proprietorship is liable to pay, may be a lesser amount to the existing regular employees like Watchman, etc.

6. Therefore, this Court is of the considered opinion that the case has to be remitted back in order to ascertain the number of workers who were engaged after closure of unit. Therefore, the matter is remitted back to the ESI Corporation and the parties are at liberty to submit additional pleadings and produce evidences to prove the case. The ESI Corporation shall conduct denova enquiry.



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7. Therefore, the Civil Miscellaneous Appeal is allowed on above terms. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2024

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

Tmg

To

1.Learned ESI Judge, ESI Court,
(Labour Court) Madurai.

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



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S.SRIMATHY, J.

Tmg

Order made in
C.M.A(MD)No.680 of 2021

09.01.2024