



C.M.A(MD)Nos.730 and 731 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.730 and 731 of 2014

Hotel Vimal International,
Represented by its present Proprietrix,
Marina Packiaraj,
No.6, Subburaman Street,
Anna Bus Stand, Madurai – 20.

... Appellant in both cases

Vs.

Employees State Insurance Corporation,
Represented by its Deputy Director,
4th Main Road, .K.Nagar,
Madurai.

... Respondent in both cases

PRAYER in C.M.A.(MD)No.730 of 2014:: Civil Miscellaneous Appeal is filed under Section 82 of the Employees State Insurance Act, 1948 against the fair and executable order passed in ESI.O.P.No.28 of 2002 dated 29.05.2013, on the file of the ESI Court (Labour Court) Madurai.

PRAYER in C.M.A.(MD)No.731 of 2014: Civil Miscellaneous Appeal is filed under Section 82 of the Employees State Insurance Act, 1948 against the fair and executable order passed in E.S.I.O.P.No.29 of 2002 dated 29.05.2013, on the file of the ESI Court (Labour Court) Madurai.



C.M.A(MD)Nos.730 and 731 of 2014

WEB In both cases:

For Appellant : Mr.M.Rajaraman
For Respondent : Mr.R.Ravikumar

COMMON JUDGMENT

The appellant is running a hotel and it is a partnership concern. The respondent ESI Corporation has initiated proceedings based on the Inspector's visit to the appellant Hotel on 18.07.2000.

2. The specific contention of the appellant is that in the Hotel the employees are less than 20. If it is so, they are not covered under the ESI Corporation Act. But during the Inspection, the Inspector has recorded that the Hotel business is being carried out with more than 20 employees. Based on the report of the Inspector, the ESI Corporation has initiated proceedings and directed the appellant to pay the contribution. The contention of the appellant is that the report was not furnished to the appellant, not submitted before the Tribunal and was never furnished before any authority or any forum. If the same is not furnished, then the same is violative of principles of natural justice and the coverage cannot be implemented.



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3. Further, the appellant contended that the report should state the number of employees, names of the employees and their signatures. For this contention, the appellant relied on the judgment rendered in the case of ***the Employees State Insurance Corporation Vs. A.Narayanan*** in C.M.A.(MD)No.75 of 2017, dated 15.03.2023, reported in ***MANU/TN/1670/2023*** wherein it is held as under:

“11. In view of the judgment of our High Court, it is clear that whenever a visit note is prepared by the Inspector for the purpose of coverage, the report must contain the list of employees, their designation, the length of service, emoluments and signature of the employees. When these particulars are lacking in the visit report, the said report cannot be a basis for passing an order under Section 45-A of the Act.

12. In the present case, admittedly, the visit report does not contain the length of service, emoluments or signature of the employees. Therefore, as rightly contented by the learned counsel appearing for the respondent, the said visit note cannot be relied upon for any purpose much less for the purpose of passing an order under Section 45 of the Act. Therefore, the ESI Court was right in accepting the contention of the respondent and setting aside the order passed by the Corporation under Section 45-A of the Act. I do not find any illegality or infirmity in the order passed by the ESI Court. However, the Corporation is at liberty to conduct inspection on any future date to ascertain the coverage under the Act.”



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The Learned Single Judge in the above said case has relied on an order made in C.M.A.No.1432 of 2006, dated 21.03.2011, in the case of ***Syndicate Printers Vs. Regional Director of ESI Corporation***, wherein it is held as under:

"22. It is the specific case of the Appellant that he has not employed more than eight persons and he was also not served with the copy of the report of the Inspector, which formed the basis for the impugned show cause notice, the determination under Section 45A of the Act and the demands that followed. In order to find out whether the provisions of the ESI Act are attracted, the report must contain the list of employees, the designation, the length of service, emoluments and the signature of the employees. It is also required to give particulars of other persons, if persons other than the employer are present. But, in the instant case, as the said report has not been produced before the ESI Court, there is no material to find out as to whether all those details are found in the said report. There are no materials produced to show on what basis liability of the Appellant is determined and the contribution was arrived at".

4. Following the aforesaid judgments, the Court is of the considered opinion when the inspection report, dated 18.07.2000 was not furnished, the ESI Corporation cannot impose any contribution on the appellant. In fact, pending



these proceedings, in order to buy peace, the appellant has paid the contribution under protest which is evident from the impugned order wherein the Tribunal has recorded that the appellant had paid the same under protest which is found in Exhibit P8 Chalan. Now, the appellant is claiming refund of the same and it is resisted by the ESI Corporation.

5. The Court is of the considered opinion when the appellant has paid the same under protest it cannot be stated that he has accepted the fact that he is coming within the purview of the ESI Corporation and he is liable to pay the contribution. Having paid under protest and continuing litigation, it has to be concluded that the appellant is not liable to pay. However, the appellant is not entitled to refund of the said amount. In other words, the appellant is not liable to as well as he is not entitled to refund of the amount. The appellant is not liable to contribution in future also. If the number of employees is increased to more than 20 in future, the appellant is liable to pay the contribution in future. It is made clear that in future if there are more than 20 employees, the appellant is be liable to pay the contribution and it can be collected prospectively only.



C.M.A(MD)Nos.730 and 731 of 2014

WEB COPY

6. With the above said observations, the Civil Miscellaneous Appeals are disposed of. No costs.

04.04.2024

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

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C.M.A(MD)Nos.730 and 731 of 2014

WEB COPY

To

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



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C.M.A(MD)Nos.730 and 731 of 2014

S.SRIMATHY, J.

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04.04.2024