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FAO-1555-1993
Date of decision : 04.09.2024

Versus

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

PANKAJ JAIN, J. (ORAL)

2. Respondent/establishment Challenged the order passed by ESI Corporation whereby the factory owned by the respondent i.e. B.T.M. Oil Mills a unit of M/s Birla Textile Mills Ginning and Pressing Factory, Malout was held to be covered under the ESI Act w.e.f. 01.04.1980 and they were required to make payment of Rs.41,932/- as contribution for the period commencing from 01.04.1980 to 30.11.1987 along with interest of Rs.13,541/-. It was claimed by the respondent/establishment that cotton ginning and pressing factory at Malout was established in the year 1947 and



the same is being run under the name & style of M/s Birla Textile Mills Ginning and Pressing Factory, Malout. In order to utilize cotton seeds separated during the manufacturing process of cotton ginning and pressing, B.T.M. Oil Mills Unit was installed in the same premises. ESI Corporation illegally covered the factory under the provisions of ESI Act and issued notices from time to time calling upon them to deposit the contribution for the period commencing from 01.04.1980 to September, 1987.

3. Two issues were raised by the respondents:

- (i) That the ESI Act is not applicable to the area wherein the factory is situated; and
- (ii) ESI Act is not applicable to the factory, the same being 'seasonal factory' in terms of Section 2(19-A) of the Act.

4. ESI Court rejected the first objection raised by establishment and held that in view of Notification dated 28.02.1981 published in the Gazette of India Extraordinary Part II read with amending Notification dated 24.08.1981, the area wherein the respondent/factory is situated, is covered.

5. Second objection was upheld and answered in favour of the factory holding it to be a seasonal factory in terms of Section 2(19-A) of the 1948 Act and thus exempted from the application of ESI Act relying upon the ratio of law laid down by Andhra Pradesh High Court in the case of **Employees' State Insurance Corporation vs. Jayalakshmi Cotton and Oil Products (P) Ltd. and Ors, A.A.O. No.198 of 1979 decided on 25.04.1980.**



6. I have heard counsel for the parties and have carefully perused the records of the case.

7. Section 1 of the 1948 Act deals with application of the statute.

Section 1(4) reads as under :

“(4) It shall apply, in the first instance, to all factories (including factories belonging to the government) other than seasonal factories:

[PROVIDED that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.]”

8. The ESI Court has held the respondent to be a seasonal factory.

“Seasonal factory” is defined under Section 2(19-A) of the 1948 Act. The same reads as under :

[(19A) "seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;]

9. Thus, in terms of Section 2 (19-A) in order to be a seasonal factory, a factory must satisfy the following requirements:



- (i) the factory must be engaged exclusively in one or more of the following manufacturing processes;
- (a) cotton ginning;
 - (b) cotton or jute pressing;
 - (c) decortication of groundnuts;
 - (e) the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea
 - (f) Or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period of not exceeding seven months in a year.
10. We are dealing with a factory engaged in cotton ginning. It is the case of the respondent/factory that a cotton ginning and pressing factory was established earlier. Need was felt to install oil mill in order to make use of cotton seeds separated during the manufacturing process of cotton ginning and pressing. The unit was installed in the same premises. Thus, it is evident that the primary manufacturing process of the respondent is cotton ginning and pressing. The other manufacturing process i.e. oil extraction and solvent extraction is only ancillary to the primary manufacturing process of cotton ginning and pressing. Thus, the ESI Court rightly held respondent/factory to be a 'seasonal factory' relying upon ratio of law laid down in *Jayalakshmi Cotton's* case (supra).



11. In view of above, this Court does not find any reason to interfere in the order passed by the ESI Court as the appeal is bereft of any question of law much less substantial question of law as required under Section 82(2) of the 1948 Act to maintain the appeal.

12. As a sequel of the discussion held hereinabove, the present appeal is ordered to be dismissed.

September 04, 2024

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes