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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.261 of 2025
and
W.M.P(MD) No.210 of 2025

M/s.Kajah Enterprises (P) Limited,
No.48, South Mount Road,
Tirunelveli Town,
Tirunelveli District – 627 006,
Represented by its Director. ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its
Additional Chief Secretary to Government,
Labour Welfare and Skill Development
(L1) Department,
Fort St.George,
Chennai – 600 009.

2. The Joint Regional Director,
Employees' State Insurance Corporation,
Salai Street, Vannarapettai,
Tirunelveli,
Tirunelveli District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(D) No.536, Labour Welfare and Skill

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Development (L1) Department, dated 02.08.2024 issued by the first respondent and quash the same as illegal and consequently direct the first respondent to grant exemption to the petitioner from the provisions of the Employees' State Insurance Act, 1948 for the period from 01.08.2024 to 31.07.2025.

For Petitioner	: Mr.M.Jerin Mathew
For R1	: Mrs.D.Farjana Ghoushia Special Government Pleader
For R2	: Mr.R.Ravikumar

<u>O R D E R</u>

The present Writ Petition has been filed by the Beedi Company challenging the order passed by the first respondent herein on 02.08.2024 rejecting the request of the petitioner/Company to grant exemption from the provisions of the Employees' State Insurance Act, 1948 for the period between 01.08.2024 and 31.07.2025.

2. Section 87 of the Employees' State Insurance Act, 1948 provides for granting exemption to factories or establishment from the purview of the ESI Act, subject to certain conditions as may be specified in the notification. As

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per the first proviso such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act. The exemption application for renewal has to be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.

3. It is not in dispute that the petitioner/Management was enjoying exemption benefits from the year 2007 onwards, on year to year basis based upon the order passed by the authority under the Act. The petitioner Management has made an application on 25.03.2024 seeking exemption for the period between 01.08.2024 and 31.07.2025. This application came to be rejected under the impugned order dated 02.08.2024. This order is put to challenge in the present Writ Petition.

4. According to the learned counsel appearing for the writ petitioner, the petitioner/Management provides similar as well as the better benefits to the employees of the Beedi Company. Therefore, they were granted

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exemption from the purview of the Act for various years. In fact, the exemption was granted in the next year, covering the period between 01.08.2025 and 31.07.2026. In such circumstances, the authorities should not have rejected the request for exemption for the period between 01.08.2024 and 31.07.2025.

5. The learned counsel appearing for the petitioner had relied upon the decision of a learned Single Judge of the this Court in W.P.Nos.17572 of 2010, 5186, 5187 and 10143 of 2011, dated 21.06.2011 wherein, the learned Single Judge has held that if the exemption is granted for a particular year, the same cannot be rejected for a different year without assigning any specific reasons and there cannot be any discrimination between the employees.

6. The learned counsel appearing for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court reported in ***(2006) 3LW 771 (Employees State Insurance Corporation and others Vs.Jardine Henderson Staff Association and others),*** wherein in paragraph Nos.34 and 35 of the Judgment, the Hon'ble Supreme Court has held that tremendous hardship will be caused if arrears are sought to be paid and nobody stands to gain, neither

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the employer nor the employee. Therefore, directing the Management to pay E.S.I contribution at a belated point of time would cause prejudice. The learned counsel appearing for the petitioner has also relied upon the judgment of Jharkhand High Court reported in ***(2008) 117 FLR 781 (Tata-Yodogawa Limited and Tayo Workers union and another Vs.State of Bihar and others)*** in support of the contentions.

7. Per contra, the learned counsel appearing for the respondent ESI Corporation relied upon the judgment of Hon'ble Division Bench of this Court in W.A.(MD) No.204 of 2019, dated 29.09.2023, wherein the Hon'ble Division Bench was pleased to hold that the exemption can be claimed based upon the records submitted by the Management from year to year basis and they cannot seek exemption as a matter of right, unless, the Management has pointed out that they were providing similar or better benefits to the employees, the right of exemption cannot be granted automatically.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

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9. A perusal of the application filed on the side of the petitioner/ Management reveals that they have enclosed the Application Form, Proforma, No Objection letter from the employees and Comparative statement to show that similar or better benefits are conferred to their employees. Paragraph No. 2 (h) of G.O.(D) No.269 Labour Welfare and Skill Development (L1) Department dated 03.06.2022 is extracted as follows:

> *"(h) The Beedi workers' Welfare Act is applicable only to the Beedi workers operating from Home (also known as Home workers). It is pertinent to note that the office employees and the Godown employees and other auxiliary workers of the Beedi Companies are denied benefits under the Beedi Workers Welfare Act. If Exemption is granted, this category of workers will be denied benefits under both the Beedi Workers Welfare Act as well as Employees State Insurance Act. Hence, Government may consider this aspect while processing this case."*

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10. The above said recommendation made and the remarks offered by the Deputy Director (Inspn), ESI Corporation reveals that the Beedi workers from the office and Godown are not covered under the Beedi Workers Welfare Act. In case, if the exemption is granted, they would be denied benefits. A perusal of Section 87 of the E.S.I Act, further reveals that the Management has to establish that they are providing similar or better benefits to the employees. It differs from year to year. Therefore, ever year they have to establish that they are providing similar or better benefits to the employees. In such circumstances, relying upon the benefits granted in a particular previous year, exemption cannot be automatically sought for in the next year.

11. In such circumstances, this Court is of the considered opinion that the judgments relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case. On the other hand, the Hon'ble Division Bench of this Court in W.A(MD) No.204 of 2019, dated 29.09.2023 after having considered the similar submissions raised by the learned counsel appearing for the petitioner therein, has arrived at a finding that the rejection of application for exemption of particular year is valid in the eye of law.

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12. In view of the above said deliberations, there are no merits in the Writ Petition. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

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

1. The Additional Chief Secretary to Government,
   Labour Welfare and Skill Development
   (L1) Department,
   Fort St.George,
   Chennai – 600 009.

2. The Joint Regional Director,
   Employees' State Insurance Corporation,
   Salai Street, Vannarapettai,
   Tirunelveli – 627 003.

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