



C.M.A.(MD)No.959 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.959 of 2023

The Employees's State Insurance,
(Sub-Regional Office), 2nd West Street,
K.K.Nagar, Madurai – 625 020,
represented by its Deputy Director

... Appellant

Vs.

Adisankara Spinning Mills Pvt. Ltd.,
Kottaiyur, Agaram Village,
Thadicombu, Dindigul District,
represented by its Executive Director

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, to set aside the judgment and decree dated 22.01.2022, passed in E.S.I.O.P.No.26 of 2012 on the file of the ESI Court (Labour Court), Madurai.

For Appellant : Mr.I.Pinaygash

For Respondent : Mr.K.Hema Karthikeyan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant, challenging the judgment and decree passed by the ESI Court (Labour Court),



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Madurai, in E.S.I.O.P.No.26 of 2012 dated 22.01.2022.

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2.For the sake of convenience, the parties are arrayed herein as per the ranking in E.S.I.O.P.No.26 of 2012.

3.The petitioner therein was the Adi Sankara Spinning Mills Private Limited, who is the respondent herein. The respondent therein is the appellant herein. The said E.S.I.O.P. was laid by Adisankara Spinning Mills Pvt. Ltd., challenging the order passed by the Sub Regional Office (Madurai), Employees' State Insurance Corporation, under Section 45A of the ESI Act, 1948, as against the petitioner.

4.The crux of the order was with respect to directing Adisankara Spinning Mills Pvt. Ltd., E.S.I. Code No.57-00-00-047751-000-0699, situated at Dindigul, covered under Employees's State Insurance Act, 1948, were required to pay the contribution in accordance with Section 40 of the said Act read with Regulations 29 and 31 of the Employees's State Insurance (General) Regulations, 1950, framed under the Act. Since the employer failed to pay contribution as required by law, notice was issued to the Principal employer by the ESI Office, vide letter No.57-00-00-047768-000-0106, dated 30.12.2009,



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to show cause notice within 15 days as to why contribution of Rs.6,54,277/- for the period from 04.02.2006 to 30.09.2007, be not recovered from the employer.

ESI Code with respect to Adisankara Spinning Mills (Knitting Division) is 57-47768-106. The Deputy Director of the Sub Regional Office in the aforesaid order made it clear that Adisankara Spinning Mills Pvt. Ltd., and Adisankara Spinning Mills (Knitting Division) having availed separate ESI Codes and separate factory registration and licence number, i.e., Adisankara Spinning Mills (Knitting Division) not being a party in the case before this Court in W.P.No.24875 of 2007, dated 08.07.2008, cannot claim to extent the benefit of the said order to the Knitting Division as well. It was also mentioned that the registered office of Adisankara Spinning Mills Pvt. Ltd., is situated at Ottakanpatti, Vedachendur, whereas the registered office, Knitting Division is situated at Tiruppur. Likewise, the unit of Adisankara Spinning Mills Pvt. Ltd., was situated at Vedachendur and the unit of Adisankara Spinning Mills (Knitting Division) is at Kottaiyur, Agaram Village, Thadicombu, Dindigul District, which is 6 km away from Spinning Mills. On that basis, it was made clear in the aforesaid order under Section 47A of the ESI Act, the Court judgment dated 08.07.2008, was not applicable to the Knitting Division of the Adisankara Spinning Mills, which has a separate ESI Code number. Challenging the same, ESI OP was laid by the Adisankara Spinning Mills



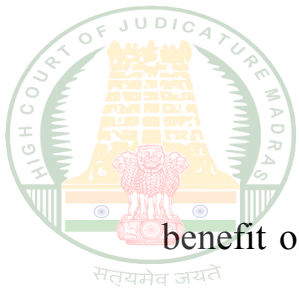
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before the Labour Court, Madurai.

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5.No witness was examined on either side. However, Ex.P1 to Ex.P11 were marked by the Labour Court. On the basis of the arguments on either parties and materials available on record, the Labour Court came to conclude that M/s.Adisankara Spinning Mills (Knitting Division) is not separate entity and the same is a branch unit. The impugned order under Section 45A dated 20.12.2012 is liable to be set aside. The petitioner is entitled to get the benefit of order passed by this Court dated 08.07.2008. Challenging the same, ESI is before me.

6.The learned counsel appearing for the appellant categorically submitted that since M/s.Adisankara Spinning Mills and M/s.Adisankara Spinning Mills (Knitting Division) possess separate ESI Code and separate factory licence and factum that the units of Adisankara Spinning Mills as well as Knitting Division are also separately situated in different destinations, the learned Labour Court ought not to have negated that the same are separate entities and as such, the Knitting Division not having preferred any Writ Petition before this Court, challenging the order under Section 45A of the Act, claiming contribution under ESI Act for the period from 04.02.2006 to 30.09.2007, cannot claim the



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benefit of the clarification order dated 08.07.2008, passed by this Court under the cover of the order passed in favour of Adisankara Spinning Mills.

For which, he relied upon two orders passed by this Court. He pointed out that this Court in the case of ***Brakes India Ltd., v. Employees's Provident Fund Organization*** reported in ***2015 (1) CWC 376***, has dealt with similar case wherein this Court has categorically held that “*when the Contractor was allotted with separate EPF Numbers for two different works registered with the PF Department with independent code number, even after work undergone by the same Contractor, the same has to be treated as an independent employer for the purpose of benefit under the welfare Act*”. He further pointed that in ***W.P.No.28387 of 2017*** dated 01.03.2024, this Court has dealt with case of ***Indian Oil Corporation v. Assistant Provident Fund Commissioner and another***, wherein this Court has held that “*even if the single Contractor is allotted with two different PF Allotment numbers for two different works, in that case, on the basis of independent code number, the benefit of legislation has to be extended to the employees of two different registration separately*” and on that basis, he categorically contended that the aforesaid judgment will squarely cover the instant *lis* in hand. Though the Knitting Unit claim to have a branch of Adisankara Spinning Mills, having available separate ESI codes and

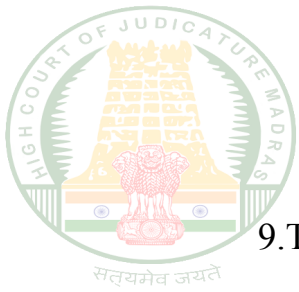


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factory licence, the same has to be dealt with separately and hence, the Knitting Division cannot claim the benefit of the order passed by this Court dated 08.07.2008 and the learned Labour Court miserably failed in appreciating the same, by considering the same as single entity and pressed for setting aside the order passed by the learned Labour Court.

7.Per contra the learned counsel appearing for the respondents categorically submitted that the arguments put forth by the learned counsel for the appellant is not at all sustainable because the learned Labour Court has well appreciated the facts available on the basis of documents before the learned Labour Court and only relying upon the judgments of two cases dealt with by the Hon'ble Division Bench of this Court and another judgment of the Hon'ble Kerala High Court, the learned Labour Court has rightly come to a conclusion that Adisankara Spinning Mills (Knitting Division) is also covered under the order passed by this Court on 08.07.2008 in favour of Adisankara Spinning Mills Pvt. Ltd.

8.Heard the learned counsel for the appellant, the learned counsel for the respondent and carefully perused the materials available on record.

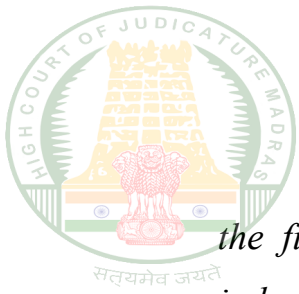


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9. Though the learned counsel for the appellant forcefully tried to convince this Court that M/s. Adisankara Spinning Mills and M/s. Adisankara Spinning Mills (Knitting Division) are separate entities, since both possess separate factory licences and separate ESI Codes, I am of the considered view that dictum of the Hon'ble Division Bench of this Court in the case of ***the Management of Antiseptic v. A. Gangadharan and the Government of India*** reported in ***(1984) 2 LLJ 232***, cannot be brushed aside and the relevant portion of the same is extracted as follows:-

“8. The following factual features are admitted : (i) Both the press and the publication are owned by the same firm; (ii) the control and supervision of both the units are by one and the same agency, may be by different partners; (iii) regarding finance, the bank account is one; and the tax assessments are common; (iv) in the press, no outside job is undertaken; (v) only to cater to the needs of the publication and to serve its cause, the press was started; (vi) the maintenance of the press as well as the publication is from and out of the subscription and advertisement revenue from the publication; and (vii) the press cannot be carried on but for the publication and the needs of the publication with regard to printing are being fulfilled by the press. In our view, as held by the learned judge, these factual features clinchingly establish the financial, managerial and functional integrality between the two units and they constitute one integrated whole.

9. Coming to the factors that have been mainly taken note of by



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the first respondent to hold that the press and the publication are independent units, they are; the location of the two units; their registration under different status (the Press, under the Factories Act and the Publication, under the Tamil Nadu Shops and Establishments Act); and the existence of two separate unions, one for the employees of the press and one for the employees of the publication. It is also urged before us that the employees of the two units stand on separate muster rolls; the wage structures are different; and there is no element of transferability from one unit to another. As rightly held by the learned judge, these features are of much consequence and the major features with regard to financial, managerial, and functional integrality besides common ownership having been established, they clinch the issue and we have to hold that the first respondent has not appreciated and applied the correct principles to the admitted facts and has not drawn the invariable conclusion in law. The purpose must be to find out the true relation between the two units, as to whether they constitute one integral whole. Unless there are other clinching factual features which completely militate against this integrality; financially, managerially and functionally, besides common ownership, the conclusion is inescapable that the two units constitute one and the same establishment. The first respondent did find as a matter of fact that there is financial, managerial and functional integrality between the two units. Yet, the first respondent chose to ignore these crucial features, taking note features, which are not very germane on the facts of the present case. The other features taken note of by the first respondent are likely to be there, even when the same establishment is to man two or more parts of its own and, on the facts of the present



case, they are not decisive.”

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10.The Hon'ble Kerala High Court in the case of ***Eddy Current Controls (India) Ltd., v. R.Provident Fund Commission and Another*** reported in ***(1994) 1 LLJ 522***, has dealt with the similar case and the relevant portion of the same is extracted as follows:-

“16.....A broad criteria emerging out of the above conspectus of case law are: In order to hold that different parts, units, branches and so forth are merely constituents of one establishment, the salient features, which are enumerated below, must be satisfied; this is, however, by entering a caveat that no hard and fast rule could be laid down as to how many of the following shall have to be satisfied - in other words, each case has to be considered in the light of its own circumstances as to whether it is a new establishment or a branch, part or constituent of the old establishment. There cannot however be a straight-jacket formula:

(1) The unity of ownership, management and control, unity of employment and conditions of service, functional integrity and general unity of purpose.

(2) The connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer.

(3) The real purpose of the tests is to find out the true relationship



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between the two parts, branches, units, etc. If they constitute one integrated whole, we say that the establishment is one. If it is to the contrary, then each unit is a separate one.

(4) In one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case the important test may be the unity of employment.

(5) Many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities, it may be difficult to discover the real thread of unity.

17. In the light of the above principles the Andhra Pradesh High Court considered the facts of that case and came to the conclusion that on the facts of that case Visakha Cement Works is a branch of the petitioner-company, and, therefore, cannot claim the benefit of exemption as postulated under Section 16 of the Employees' Provident Funds Act for the infancy benefit. It was further held that the fact that Visakha Cement Works has been registered separately, licensed separately, granted interest-free sales tax loans as well as a rebate of 25% in power tariff cannot be reckoned as contributing factors to be taken as guidelines in finding whether the unit is a separate establishment or a branch of the main unit.



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18. We are also of the view that the mere fact that separate licences were obtained under the Factories Act for the two factories in question is not a relevant consideration at all. Applying the principles deducible from the aforesaid decisions to the facts of this case, we are clearly of the view that the Coimbatore factory is only a branch of the establishment at Chalakudy, for the reasons which we have already mentioned.”

11. Fully fortified by the judgments extracted supra, I am of the considered view that Adisankara Spinning Mills Pvt. Ltd., and Adisankara Spinning Mills (Knitting Division) has satisfied the salient features enumerated of the judgment reported in **(1984) 2 LLJ 232**. No doubt, both the factories are managed by a single owner, Single Board of Directors, Single GST, single pan number and if both the units are tested under parameteres of judgment reported in **(1984) 2 LLJ 232**, the same will be squarely covered by the said judgment. The fact in issue in the present case is that several factories filed batch of Writ Petitions in W.P.Nos.24875 of 2007, batch, which was dealt together by this Court in which, all those factories sought exemption from the applicability of ESI Act, which was outrightly dismissed by this Court, however, when clarification was sought for by the aforesaid entities before this Court, this Court by order dated 08.07.2008, made it clear that those institutions would be



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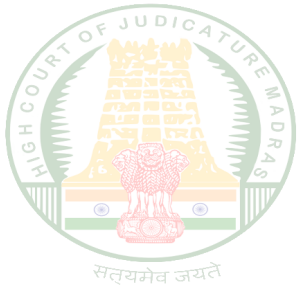
covered under ESI Act and the contributions are liable to be paid by the entities

from the date of Writ Petition, i.e., 03.10.2007. It is only on that premise, Adisankara Spinning Mills, which is one of the writ petitioner in the aforesaid branch is entitled to pay contribution from 03.10.2007, claiming the same benefit however, excluding the branch unit of Adisankara Spinning Mills (Knitting Division), the impugned order came to be passed by the Deputy Director of Sub Regional Office, ESI, Madurai, under Section 45A of the ESI Act, 1948. The same was rightly set aside, on the basis of the judgments of the Hon'ble Division Bench extracted supra. Hence, I am not inclined to interfere with the order of the learned Labour Court.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

04.03.2025

NCC : Yes / No
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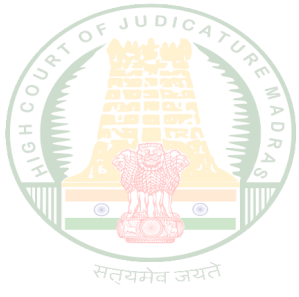
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To

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



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L.VICTORIA GOWRI, J.

Mrn

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