

W.P.(MD).No.18779 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.18779 of 2018

and

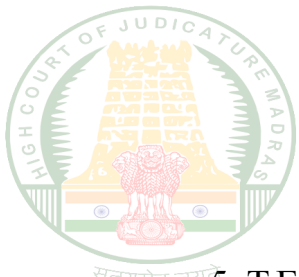
W.M.P(MD) Nos.16636 and 16637 of 2018

M/s.Noor Sait Beedi Company,
No.28, Kutty Moopan Street,
Melapalayam,
Tirunelveli – 627 005,
Represented by its Proprietor.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its
Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai.
2. The Regional Director,
Employees' State Insurance Corporation,
147, Sterling Road,
Nungambakkam,
Chennai – 600 034.
3. A.Mohammed Ismail
4. S.A.Abdul Rahman



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5. T.Esakkiappan

... Respondents

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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 Letter No.11792/L1/2016-5, dated 11.07.2017 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 22.10.16 to 21.10.2017.

For Petitioner : Mr.M.Jerin Mathew

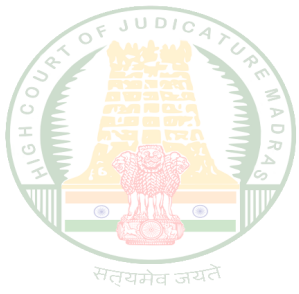
For R1 : Mrs.D.Farjana Ghoushia
Special Government Pleader

For R2 : Mr.R.Ravindran

For R3 to R5 : No appearance

ORDER

The present Writ Petition has been filed by the Beedi Company challenging the order passed by the first respondent herein on 11.07.2017 rejecting the request of the petitioner/Company to grant exemption from the provisions of the Employees' State Insurance Act, 1948 for the period between 22.10.16 and 21.10.2017.

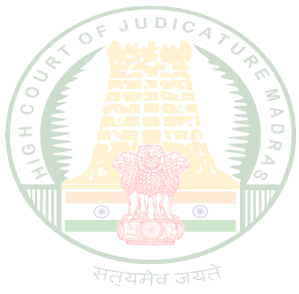


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2. Section 87 of the Employees' State Insurance Act, 1948 provides for granting exemption to factories or establishment from the purview of the ESI Act, subject to certain conditions as may be specified in the notification. As per the first proviso 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 15.06.2016 seeking exemption for the period between 22.10.2016 and 21.10.2017. This application came to be rejected under the impugned order dated 11.07.2017. This order is put to challenge in the present Writ Petition.



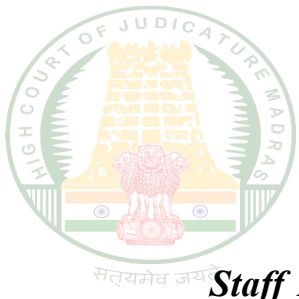
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4. According to the learned counsel appearing for the writ petitioner, the petitioner/Management provides similar as well as the better benefits to the employees of the Beedi Company. Therefore, they were granted exemption from the purview of the Act for various years. In fact, the exemption was granted in the next year, covering the period between 22.10.2017 and 21.10.2018. In such circumstances, the authorities should not have rejected the request for exemption for the period between 22.10.2016 and 21.10.2017.

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**

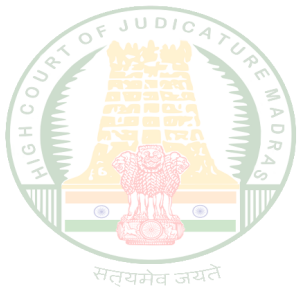


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Staff Association and others), wherein in paragraph Nos.34 and 35 of the Judgment, the Hon'ble Supreme Court has held that tremendous hardship will be caused if arrears are sought to be paid and nobody stands to gain, neither the employer nor the employee. 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 second 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.



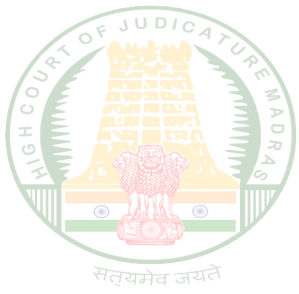
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8. Heard the learned counsel appearing on either side and perused the materials available on record.

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 (f) of the order impugned in the writ petition is extracted as follows:

“(f) 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 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.”

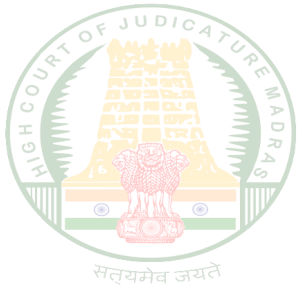


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10. The above said recommendation made and the remarks offered by the Deputy Director (Inspn), ESI Corporation reveal that the Beedi workers from the office and Godown are not covered under the Beedi Workers Welfare Act. In case, if the exemption is 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, every 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 Petitions stand closed.

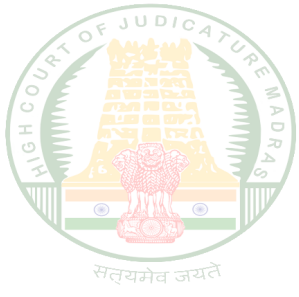
26.06.2025

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

1. The Secretary,
Labour and Employment Department,
Secretariat,
Chennai.
2. The Regional Director,
Employees' State Insurance Corporation,
147, Sterling Road,
Nungambakkam,
Chennai – 600 034.



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