(2008) 08 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No. 3386 of 2001

Compass Shipping and Trading (Private) Ltd. APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 1(5), 2(12), 2(9)

Citation : (2008) 08 MAD CK 0056

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V. Prakash, for the Appellant; S. Jayakumari, R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

2. This writ petition has been filed by the petitioner company challenging the show cause notice, dated 22.01.2001, issued by the third respondent, and the consequential show cause notice, dated 22.01.2001, issued by the second respondent, relating to the payment of the contributions due from the petitioner company, under the provisions of the Employees State Insurance Act, 1948.

3. The main contention raised on behalf of the petitioner company is that the said company does not come under the purview of the provisions of the Employees State Insurance Act, 1948. The petitioner company which is a shipping agent, has a total of twenty eight employees. Twelve of the employees draw a gross salary of over Rs. 6500/- per month and sixteen of them draw a gross salary of less than Rs. 6500/- per month.

4. According to Section 2(9) of the Employees State Insurance Act, 1948, an employee is a person employed for wages, in connection with the work of a

factory or establishment to which the Act applies. Under the provisions of Section 2(9), the Central Government may prescribe a wage ceiling for the application of the Act. Accordingly, the Central Government, under a notification, dated 23.12.96, had enhanced the wage ceiling for coverage under the Act from Rs. 3000/- to Rs. 6500/- per month, with effect from 1.1.97. Section 2(12) of the Act defines a factory to mean any premises where ten or more persons are employed on wages, where the manufacturing process is being carried on with the aid of power, or where twenty or more persons are employed in the manufacturing process, without the aid of power.

5. It has been further stated that, on 7.9.98, the second respondent had issued a show cause notice to the petitioner company, calling upon the petitioner company to take immediate steps for registration of its employees, under the Employees State Insurance Act, 1948. In the said notice, it had been indicated that the establishment of the petitioner company would be covered under G.O.Ms. No. 1088, dated 22.12.76, issued in exercise of the power, u/s 1(5) of the Act, extending the provisions of the Act to other establishments. The petitioner company had stated that the said order is applicable only to establishments having a minimum of twenty employees falling within the definition of "employee", under the Act.

6. On 11.11.98, the petitioner company had sent a reply to the second respondent, bringing it to his notice, the decision of the Supreme Court in Employees State Insurance Corporation v. M.M. Suri & Associates (P) Ltd., stating that the Act would not be applicable to the petitioner company in the light of the said judgment. Thereafter, the petitioner company had received a communication from the employees State Insurance Inspector, regarding the inspection of the records pertaining to the petitioner company. In spite of the reply sent by the petitioner company explaining the legal position, two show cause notices, dated 22.1.2001, had been issued to the petitioner company to show cause as to why an assessment of contribution to the tune of Rs. 1,95,195/- should not be made against the petitioner company and to show cause as to why the petitioner company should not be prosecuted for its failure to pay the alleged amount as its contribution, under the Employees State Insurance Act, 1948. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

7. In the counter affidavit filed on 19.8.2008, on behalf of the respondents, it has been stated that a representative of the petitioner company had attended the personal hearing held on 5.3.2001, pursuant to the show cause notices, dated 22.01.2001, issued to the petitioner company. The representative of the petitioner company, who had attended the personal hearing on 5.3.2001, had sought for further time for the production of the necessary records in support of the claims made on behalf of the petitioner company to show that the said company is not liable to pay the Employees State Insurance Contribution, in view

of the fact that the provisions of the Employees State Insurance Act, 1948, are not applicable to the petitioner company. Since, no records had been produced by the petitioner company as promised by its representative, on 5.3.2001, an inspection was made by the concerned Inspector to find out the status of the company, with regard to the applicability of the provisions of the Employees State Insurance Act, 1948. Since there was no co-operation from the petitioner company to produce the relevant records and in view of the non-compliance of the requirements of the Act by the petitioner company, from the date of its provisional coverage from 1.6.97., the impugned show cause notices had been issued based on the preliminary inspection report, dated 6/8.7.98.

8. On considering the averments made on behalf of the petitioner, as well as the respondents and on a perusal of the records available, this Court is of the considered view that it is clear that the impugned show cause notices, dated 22.1.2001, had been issued under the provisions of the Employees State Insurance Act, 1948. Since the petitioner company had not produced the necessary records before the respondents to show that the said company is not covered by the provisions of the said Act, the impugned notices were issued by the second and third respondents asking the petitioner to show cause as to why the petitioner company should not be made liable for the payment of a sum of Rs. 1,95,195/-, as the Employees State Insurance Contributions due from the said company, in accordance with the provisions of the Employees State Insurance Act, 1948, and as to why the petitioner company should not be prosecuted against, on its failure to pay the said amount.

9. It is also clear that it is for the petitioner company to produce the necessary records before the respondents to show that the petitioner company is not liable to pay the Employees State Insurance contributions, as the provisions of the Employees State Insurance Act, 1948, is not applicable to the petitioner company. Therefore, this Court is of the view that ends of justice would be met if the impugned show cause notices issued by the second and third respondents, dated 22.1.2001, are set aside and the petitioner is permitted to produce the relevant records before the second respondent, within a period of four weeks, to show that the petitioner company does not come under the purview of the Employees State Insurance Act, 1948. As the main contention of the learned Counsel for the petitioner is that the provisions of the Employees State Insurance Act, 1948, does not apply to the said company, in view of the fact that the said company does not employ twenty or more persons as defined u/s 2(9) of the Act, at the relevant point of time, it goes without saying that it is for the said company to substantiate its claims by producing the relevant records before the authorities concerned.

10. In such circumstances, the impugned notices, dated 22.01.2001, issued by the second and third respondents, are set aside and it is made clear that it is open to the petitioner company to produce the relevant records before the second respondent, within a period of four weeks from the date of receipt of a

copy of this order to show that the petitioner company is not liable to pay the contributions as claimed by the respondent Corporation, since it is not covered under the provisions of the Employees State Insurance Act, 1948. On submission of the relevant records by the petitioner company, the second respondent is directed to pass appropriate orders thereon, on merits and in accordance with law, within a period of twelve weeks thereafter. Accordingly, the writ petition stands allowed with the above directions. No costs.