(1988) 10 MAD CK 0008

In the Madras High Court

Heatly and Gresham (I) Limited — APPELLANT

Vs

Employees State Insurance Corporation — RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:
Employees State Insurance Act, 1948 — Section 75

Citation : (1989) 2 MLJ 517

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The issue for decision in this Letters Patent Appeal is with regard to the coverage of Employees State Insurance Act, 1948 (Act

34 of 1948) (hereinafter referred to as the Act). The appellant, Messrs. Heatly and Gresham (India) Limited is a public limited company and it is in

occupation of the third floor of the Indian Chamber Buildings, Madras. It deals with machine tools, civil engineering and material handling

equipments, oil burners, etc., Oil burners are assembled and manufactured in its factory at Sahibabad in Uttar Pradesh which has been covered

under the Employees State Insurance Act. The other materials are purchased from manufacturers, stored in godowns and despatched from the

stores directly to the parties. In Madras, the said premises is a branch office as also in Calcutta, Bombay, Delhi and Ahmedabad. The Tamil Nadu

Government issued a notification in G.O.Ms. No. 1008, dated 22-12-1976 extending the provisions of the Employees State Insurance Act to

certain establishments, one of them being ''shops''. The respondent, Employees State Insurance Corporation, asked the appellant company to

comply with the provisions of the Act stating that it (the Madras Branch) is a ''shop'' within the meaning of the said G.O. Ms.1088, dated 22-12-

1976. This was resisted by the appellant contending that in the branch office only administrative work of processing orders and executing sales is

carried out by the clerical and administrative staff and no goods stored there, nor service is rendered to the customers in it, and therefore the

Madras branch is not a ''shop''i But the respondent insisted and thereupon the appellant company filed a petition in E.S.I.O; P.I of 1980 u/s 75 of

the Act ""before the E.S.I.Court for declaration that the Madras Office is not a ''shop'' and therefore the employees therein are not ''employees'' as

defined in Section 2(9) of the Act.

2. The E.S.I., Court considering the evidence of the Manager of the Madras Office of the appellant company as P.W.I has found as follows....

Therefore, the above evidence of P.W.I clearly establishes that at any rate so far as the spare parts as well as the goods manufactured by the

petitioner company, the orders for supply thereof are directly received in the Madras Office and that payments therefore are also received in the

Madras Office, and that if the goods are readily available for supply in the godown in the Madras Office, they are directly supplied to the customer

from the godown on receipt of payment.

The E.S.I. Court further held that:

It therefore appears to me that while the first two decisions cited supra do not apply to the facts of the present case, the last decision does apply to

the facts, and on the basis of the said decision, it has to be held that services rendered to the customers in the Madras branch premises of the

petitioner company and that in fact goods are also sold in the said premises as established by the evidence and hence the Madras premises of the

petitioner company would be a shop.

On these findings, the E.S.I. Corporation held that the Madras Office is covered by the Government Order No. 1088 dated 22-12-1976 and

therefore the Madras Office is liable to be covered under the Act.

3. As against this order the appellant company preferred an appeal to the High Court and Sengottuvelan, J., in AA.0.57 of 1981, concurred with

the findings of the E.S.I.Court that the Madras Office is ''shop'' and is liable to be covered under the Act and he dismissed the appeal. As against

this the present L.P Appeal has been filed.

4. Herein the Letters Patent Appeal our work is rendered easy by reason of the recent Supreme Court decision in M/s. International Ore and

Fertilizers (India) Pvt. Ltd. Vs. Employees'' State Insurance Corporation, Wherein on identical facts the same issue was decided. Stating about the

work that is carried on in the premises in question the Supreme Court has stated at paragraph 4:

The evidence produced in the case shows that the petitioner is carrying on its business at its business premises in Secundarabad. At that place the

petitioner carries on the commercial activity facilitating the emergency of contracts of sale of goods between its foreign principals and the State

Trading Corporation/Minerals and Metals Trading Corporation of India. It arranges for the unloading of the goods under its supervision and for the

survey of the goods despatched by its foreign principles and on the goods being delivered to the Central Government it collects the price payable

by the Government and remits it to its foreign principals.

The Supreme Court has then stated that:

It is thus clear that the activities carried on by the petitioner constitute trading activities although the goods imported from abroad are not actually

brought to the said premises and delivered to the purchaser there. In our opinion, it is not actually necessary that the delivery of the goods to the

purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into ''shop''. The

delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiation of the terms of sale, carrying on of the survey of the

goods imported, arranging for the delivery of the goods sold collection of the price of the goods sold, etc., are all trading activities. The premises

where business is carried on by the petitioner is undoubtedly shop as the activities that are carried On there relates only to the sale of goods which

are imported into India. The petitioner acts as the agent of its foreign principals who are the sellers. The petitioner directs and controls all its

activities from the premises in question. If orders are received at a place which ultimately fructify into sales and the resulting trading activity is

directed from there that place comes to be known as a ''shop''.

The further observations of the Supreme Court is also relevant and that is as follows....

In our view the Employees Insurance Court placed a very narrow interpretation on the expression ''shop'' while upholding the contention of the

petitioner by confining ''shop'' to a place where goods are actually stored and delivered pursuant to a sale. We agree with the decision of the High

Court that while construing a welfare legislation like the Act and the notification issued there-under a liberal construction should be placed on their

provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified.

Lastly the Supreme Court has said....

There is no doubt that the establishment of the petitioner at Secunderabad is a ''shop'' where selling activity is carried on and by virtue of the

notification issued by the State Government, the Act becomes applicable to it.

5. It is manifest therefore that the Madras Branch of the appellant company is a ''shop'' coming within the purview of the Government Order No.

1088 dated 22-12-1976 and therefore the Employees State Insurance Act is applicable to it. Hence in this view of the matter the decision of the

learned single Judge has to be upheld and therefore Letters Patent Appeal has to be dismissed. We order accordingly. No costs.