

(2003) 09 AP CK 0015
In the Andhra Pradesh High Court
Case No : A.A.O. No. 167 of 2000

Jamuna Stores

APPELLANT

Vs

Regional Director, E.S.I. Corporation

RESPONDENT

Date of Decision : 01-09-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 82(2)

Citation : (2004) 5 ALD 13 : (2004) 4 ALT 258 : (2005) 1 LLJ 248

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : P. Nageshwara Sree, for the Appellant; B.G. Ravinder Reddy, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—The appellant is the petitioner who seeks to assail by way of this appeal u/s 82 of the Employees' State Insurance Act dismissing its application filed u/s 75(1)(g) of the Act as per the orders dated October 11, 1999 in EIC No. 74 of 1998 on the file of the Employees' Insurance Court-cum-Industrial Tribunal-I, Hyderabad. Heard Ms. Nageshwara Sree, the learned counsel for the appellant and also Sri B.G. Ravinder Reddy, the learned Standing counsel for the respondent Corporation.

2. The facts in brief are that the petitioner - Jamuna Stores claims that its retail business in cloth was started in the year 1983 and at any point of time, the petitioner did not have employee more than 15 persons and therefore the provisions of ESI Act are not applicable. However, a demand was raised by the respondent treating the petitioner and Jamuna Silks as two different units, though situated in the same premises and therefore the entire claim is wholly unsustainable.

3. Contesting the claim, the case of the respondent Corporation is that virtually both the aforesaid units are one and the same and interdependent and therefore

they have rightly taken them together for the purpose of assessment and rightly made the demand.

4. With these and other allegations as contained in their respective pleadings, the parties went into trial and the appellant examined PW. 1 and got marked Exhibits P. 1 to 21. On behalf of the respondent corporation, two inspectors were examined as RWs 1 and 2 got marked Exhibits Rule 1 to 17. On consideration of the evidence and material on record, the Tribunal dismissed the application holding that both the units are one and the same and the appellant is liable to a contribution from January 1, 1985 to March 31, 1987.

5. The learned counsel for the appellant submits that having regard to the facts and circumstances both the units could not possibly be taken as one. Further, it was RW. 1 the inspector who himself after conducting an inspection recommended that both the units to be dealt with as independent units and therefore the orders clubbing together is unsustainable. Further, the distinguishing factor is that the appellant deals in retail cloth business whereas the other unit deals in textiles i.e., sarees and both the units are paying contribution separately, which was being accepted and therefore the order requires to be set aside by allowing the application filed by them.

6. The learned Standing Counsel for the respondent Corporation submits that the finding of the Tribunal holding that both the units are one and the same is based on evidence and material which constitutes a finding of fact and that the appellant has totally failed to make out or establish its case as to its independent identity and therefore there is no warrant for interference.

7. Considering the submissions and also on a perusal of the record, the main ground as sought to be urged in the appeal is as to whether the appellant and other concern Jamuna Silks is one and the same. Except the said plea, no other plea is raised. Though, it has been the case of the appellant that both the said units are different, except examining PW. 1, there is no other independent evidence brought on record in support of its case as to the separate identity. No witness was examined from the other unit and any material is produced by the appellant to show its separate entity. Whereas the two inspectors who have been examined as RWs 1 and 2 reiterated to the fact that there is commonness and interdependency in between the two units and therefore they have to be treated as one. There is also no dispute as to the fact that some of the partners are common in both the concerns which belong to the same family. It is also the admitted case of PW. 1 that he is looking after the ESI of both the units. In view of the same, heavy burden lies on the appellant herein to make a distinct identity by cogent evidence and material. Further, as rightly observed by the Tribunal, no proof is filed to show that they are separate units. The Tribunal has taken into consideration the entire evidence from both the sites and also the checkered events which ultimately leading to demand made by the Corporation for the relevant period and rejected the case of the appellant. In view of the same, I do not find any question of law much less a substantial question of law to interfere

in exercise of powers u/s 82(2) of E.S.I. Act, 1948. Accordingly, the appeal is dismissed. No order as to costs.