(1970) 03 CAL CK 0006

In the Calcutta High Court

Case No : F.M.A. No. 316 of 1968

Universal Refrigeration Company Pvt. Ltd. APPELLANT

Vs

Employees'' State Insurance Corporation RESPONDENT

Date of Decision : 05-03-1970

Acts Referred:
Employees State Insurance Act, 1948 — Section 39, 73

Citation : (1971) 1 CALLT 213 : 74 CWN 674 : (1974) 1 ILR (Cal) 289

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Lola Hemanla Kumar, Ambica Charan Bhatlacharya and Ralhindra Nalh Bhattacharya, for the Appellant;Prasanla Kumar Ghosh, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—This appeal is by the employer company against an order of the Employees'' State Insurance Court, West Bengal, awarding Rs. 7,370 as the Employees'' contribution payable by the Appellants to the Respondent Corporation under the Employees'' State Insurance Act. The proceeding for recovery of this contribution was instituted on October 28, 1965. The Appellants'' objection was that their concern in question was not a factory within the meaning of the above Act and, further, that the amount claimed by the Respondent had no legal basis.

2. Before the Employees'' State Insurance Court, the Appellants did not produce their records to enable the Court to assess the compensation in question. Accordingly, the assessment made by the Respondent was accepted. The Court also was of the, view that the Appellant concern was a factory and the Appellants were liable to make the contribution.

3. Before us, the above findings of the Tribunal below were questioned by Mr. Lala who appeared in support of this appeal. He contended, in the first place, that the Appellant concern was not a factory within the meaning of the above

statute, as there was no evidence or no sufficient evidence that it employed twenty workers or more, or that it was engaged in manufacturing process with the aid of power. This contention, however, cannot be accepted on the materials before us. It is clear from the extracts from the attendance register of the Appellants, marked Ex. B, that the number of workers employed by them exceeded the requisite number of twenty. It appears, further, from the surveyor''s report, Ex. 1(a), that the Appellant concern was using power for the purpose of manufacturing blower fans, cooling coils etc. which is confirmed by the Appellants'' own application for licence, which is Ex. 3 in the case. The tests, therefore, for a factory under the Act are amply satisfied by the evidence on record and Mr. Lala''s argument to the contrary must, accordingly, fail. That makes the Appellants liable to contribution under the above Act.

4. On the question of assessment, however, the position is somewhat uncertain. The Appellants did not produce the necessary records. The Respondent Corporation also docs not appear to have led any evidence on the point to enable the Tribunal below to make necessary assessment. It simply relied on the ad hoc assessment which appears to have been made by it under the Central Government notification u/s 73(h) of the above Act. That notification clearly applies on its own terms to special contributions under the Act, and the instant case is not one of special contribution. It is a case of ordinary contribution u/s 39 of the Act. The very basis of the Respondent''s assessment, therefore, is detective and unsupportable in law. The assessment made by the Tribunal below on the Respondent''s figure must, accordingly, be set aside with the result that fresh assessment has to be made and, for that purpose, necessary materials must be produced before the Tribunal concerned.

5. We, accordingly, allow this appeal only to this extent that the assessment made by the Tribunal below would be set aside and the matter would be sent back to it for fresh assessment on evidence to be produced by the parties on the said point. We affirm, however, the finding of the Tribunal below that the Appellants are liable to contribution under the above Act.

6. If the Appellants produce the necessary records before the Tribunal below, the said Tribunal will consider the same and come to its own conclusion on the question of assessment of the contribution in accordance with law.

7. There will be no order for costs in this appeal.

Amiya Kumar Mookerji, J.

8. I agree.