IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	**27.04.2023**
DELIVERED ON	**26.06.2023**

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MRS.JUSTICE R.KALAIMATHI

W.A.No.2836 of 2022
and
C.M.P.No.23210 of 2022

Hindustan Unilever Ltd.,
50 & 51 SIPCOT Industrial Complex,
Hosur 635 126
Rep. by its Senior Legal Executive ... Appellant

vs.

The Deputy Director,
Sub Regional Office (Salem),
Employees' State Insurance Corporation,
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem-636 009. ... Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order in W.P.No.13712 of 2014 dated 10.08.2022.

For Appellant : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co.

For Respondent : Ms.G.Narmadha
For Mr.G.Bharadwaj

*****

JUDGMENT

(***Judgment of the Court was made by S.Vaidyanathan,J.***)

This Writ Appeal has been filed against the order dated 10.08.2022 of the learned Single Judge, in and by which, the Writ Petition filed by the Appellant herenin, questioning the order issued by the respondent herein, under Section 45-A of the Employees' State Insurance Act, 1948 (in short the 'ESI Act, 1948) was dismissed.

2. For the sake of brevity, the parties would be referred to as per the original nomenclature as indicated in this Appeal as 'Appellant Factory' and 'Respondent'.

3. The facts leading to filing of the Writ Petition and the subsequent Writ Appeal by the Appellant Factory are as follows:

i) the Appellant Factory, having one of the factories at Coimbatore, is into the business of manufacturing pure coffee, coffee and chicory mixture in the name and style of M/s.Brooke Bond India Limited and the Appellant Factory does not deal with the process of chicory as a separate item.

ii) It was the stand of the Appellant that there was another company called Lipton India Limited, which had tea factories in various places and in the year 1991, M/s.Brooke Bond India Limited and Lipton India Limited got merged with a change in nomenclature as Brooke Bond Lipton India Limited. Later on, there was yet another merger with Hindustan Lever Limited / Appellant herein;

iii) On 06.12.2010, the Social Security Officer of the Respondent had visited the unit of the Appellant in respect of coverage of ESI Scheme and by communication dated 10.02.2011, it was informed that the Appellant Factory was liable to be covered with effect from 01.01.2010. After producing the legal history of tea and coffee factories of Brooke Bond India Limited and Lipton India Limited, an personal hearing was afforded on 30.08.2013, in which, it was resolved to ask the Social Security Officer to re-visit the factory to ascertain whether the activity being carried on in the Appellant Factory falls within the definition of seasonal factory in terms of Section 2(19A) of the ESI Act, 1948. Section 2(19A) of the ESI Act, 1948 reads as under:

"(19A) "seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year.

(a) in any process of blending, packing or repacking of tea or coffee;or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify."

iv) The Appellant Factory is in the process of blending, processing and packing of tea, falling under the purview of the above provision and in the Appellant Factory, a canteen is being maintained for the benefit of its employees and there was also deployment of security guards through an agency, apart from engaging an outside agency for housekeeping and a Contractor for civil work. The Appellant Factory is not involved in running the canteen or engaging security guards or persons for cleaning activities.

v) The Appellant Factory had registered itself as a Principal Employer and is holding a Certificate of Registration and there were four Contractors supplying manpower to the Appellant Factory at Hosur, who are also

holding a valid license under the said Act. Since the business of the Contractors will not come within the definition of seasonal factory, the provisions of the ESI Act will apply to their employees. In 2010, the Respondent informed that the Contractors, calling upon them to cover their Establishments under the ESI Act, by treating them to be independent establishments and the Respondent also allotted a Code number to the establishments of the Contractors, thereby they have been remitting ESI contributions in respect of their employees from April, 2010.

vi) On 25.03.2014, the Respondent passed an order under Section 45A of the ESI Act, 1948, stating that any activity supporting the manufacture of coffee is liable to be covered under the ESI Act. It was also observed that the Appellant Factory had engaged both direct employees and in some cases, indirect employees through various manpower suppliers and therefore, a liability was fastened on the Appellant Factory on due determination of the amount of Rs.29,88,892/- for the period from 01.04.2006 to 31.03.2010, on the ground that the Contractors are remitting ESI contribution.

vii) It was the stand of the Appellant Factory that the expression 'manufacturing process' and 'power' shall have the meaning respectively assigned to them in the Factories Act and the Coffee and tea factories of both Brooke Bond India Limited and Lipton India Limited are not covered under the ESI Act. When the aforesaid two Companies questioned the notification against their coverage under the ESI Act, the Writ Petitions were allowed and the Appeal filed by the ESI Corporation in W.A. FMA 203 of 1972, 43 and 312 of 1974 were dismissed, thereby, the Coffee Factory of Brooke Bond India Limited at Coimbatore was excluded from such coverage.

viii) To add further, when Brooke Bond India Limited set up a factory in Whitefield near Bangalore in October, 1972, the Regional Director of the ESI Corporation, Bangalore was of the view that the said factory cannot be treated as a seasonal factory, as it was carrying on the manufacturing operation for more than seven months. Even the High Court of Karnataka, by an order dated 28.10.1976, held that even after amendment, it was a seasonal factory and its coverage was not sustainable.

ix) Similarly, the appeal filed by the ESI Corporation, Bangalore,

seeking to cover the coffee factory of Brooke Bond India Limited, Whitefield, Bangalore was dismissed on 11.09.1981 and when the judgment was challenged before the Supreme Court, the judgment of the Karnataka High Court was upheld in the case reported in 1992 I LLJ 287. Thus, the coffee factories and tea factories of both Brooke Bond India Limited and Lipton India Limited were held to be seasonal factories both before and after amendment Act 44 of 1966. It was pointed out that by amendment Act 29/1989, the definition of "Seasonal Factory" was separated from Section 2(12) and inserted after 2(19) as 2(19A) with effect from 20.10.1989.

x) The respondent, without proper application of mind, passed the order dated 25.03.2014, holding that the Appellant Facotry is liable to be covered under the ESI Act and determined the amount as aforestated, against which, a Writ Petition was preferred by the Appellant Factory on the ground that the issue has become final by the earlier orders passed by the High Court and it is not permissible for the respondent to reopen the issue by invoking the powers vested under Section 45A of the ESI Act, 1948. However, the learned Single Judge, by order under Appeal dated 10.08.2022, dismissed the Writ Petition and upheld the order of the

respondent with an observation that the activities of the Appellant Factory justify the coverage of the establishment under the ESI Act, 1948, as the employees of outside agencies deployed in the Appellant Factory were covered under the ESI Act, 1948.

4. The Respondent has contended that a Notice (C-18) Adhoc dated 05.08.2013 was issued in respect of contribution of Rs.29,88,892/-, relating to omitted wages of contract employees and during survey by the Inspector, it was found that some Contractors were covered only from November, 2011 and for the omitted period, the Appellant Factory is liable to pay the contribution as per Section 40 of the ESI Act, 1948. The Notice was issued for contribution of Rs.9,47,381/- in respect of salaries and allowance of direct employees and the said amount has not been included in the 45A order under challenge.

4.1. The Respondent has further contended that despite various opportunities being given, the Appellant Factory did not produce any material documents to prove its onus, except reiterating that it is a seasonal factory and they are exempted from liability under the Act. The order of the

learned Single Judge does not suffer from any informity, as it is a well considered order, touching upon the merits of the matter in the light of the judgment of this Court in W.A.No.1971 of 2011.

4.2. The Respondent has also contended that the issue whether the Appellant Factory is a seasonal factory or not need not be relevant, as the order under Section 45A of the ESI Act, 1948 was issued for contribution of omitted wages in connection with contract employees and the Appellant Factory, being the Principal Employer is bound to remit the amount so demanded.

4.3. The case put forth by the Respondent was that it was admitted by the Appellant Factory itself that the production of coffee beans from coffee berries does not take place at the factory in Hosur, which is under dispute. The judgment passed in W.A.No.1971 of 2011 is identical to the one on hand, inasmuch as in both cases tea leaves / coffee beans are procured from elsewhere and only processing into the powder form takes place at the Appellant's factory and against the judgment of the Division Bench, no appeal has been preferred. When the Appellant Factory admitted

procurement of coffee powder, it cannot be said that it is into the business of exclusive manufacturing of coffee.

4.4. The case of the Respondent was that the processing of coffee beans to filter coffee and instant coffee cannot be equated with the process of manufacturing of coffee, since it begins only from the stage of roastig and is not seasonal in nature and thus, the process of manufacturing coffee beans from the coffee berries is seasonal in nature.

4.5. The Social Security Officer of the Respondent, after verifying the records of the Appellant Factory recommended vide Survey Report dated 24.12.2010 that the Appellant Factory ought to be covered under the ESI Act, 1948 with effect from 01.01.2010, which was in addition to the calculation of omitted wages of contract employees, based on the available records. It was noticed that the manufacturing of filter coffee powder involves roasting and grinding, whereas the production of instant coffee powder involves roasting the beans, grinding to powder, extracting the coffee decoction, evaporation and drying of the decoction to produce powder, which can be used directly to prepare the beverage. When the Appellant

Factory admitted that they not only involved in manufacture of coffee beans from coffee berries, but also involved in processing the coffee beans brought from various sources into coffee powder, the Appellant Factory cannot be termed as a seasonal factory.

4.6. The Respondent finally stated that if the Appellant still insists upon the stand that they fall within the ambit of seasonal factory, they can very well raise a dispute before the ESI Court under Section 75 of the ESI Act, 1948 supported by documents instead of claiming exemption by merely relying on a judgment of the Apex Court.

5. Learned counsel for the Appellat Factory has submitted that the Appellant Factory is in the process of blending or packing and involved in such manufacture for more than seven months in a year. Therefore, the Appellant Factory will not fall under the amended Section 2(19A) of the ESI Act, 1948. The opinion rendered by the Authorities was not in consonance with the provisions of the amendment and that the entire issue has got to be decided afresh by the Authority concerned under Section 45A of the ESI Act, 1948 and if they are seasonal industry, the provisions of the ESI Act, 1948

may not be applicable and the Authorities are estopped from rendering any finding to that effect. Learned counsel for the Appellant Factory has relied upon a judgment of the Supreme Court in the case of ***Regional Director, Employees' State Insurance Corporation vs. High Land Coffee Works of P.F.X.Saldanha and sons and another***, reported in ***(1991) 3 SCC 617***, to contend that the amendment to Section 2(19A) of the ESI Act, 1948 will not change the status of the Appellant Factory. For the sake of brevity, the relevant paragraphs of the judgment (supra) are extracted below:

> "6. The sole question for consideration is whether the respondents' factories in view of the amendment to the definition of 'seasonal factory' have lost the benefit of exclusion from the Act. The High Court on this aspect has observed that the purpose of the amendment was to enlarge and not to restrict the statutory concept of 'seasonal factory' and the position of respondents establishments as seasonal factories under and for the purpose of the Act remained unaltered even after the amendment.
>
> 7. The view ,taken by the High Court seems to be justified. The statement of Objects and Reasons of the Bill which later became the Act 44 of 1966 indicates that the proposed amend- ment was to bring within the scope of the definition of 'seasonal factory', a factory which works for a period of not exceeding seven months in a year- (a) in any process of blending, packing or repacking of tea or coffee; or (b) in such other manufacturing process as the Cenrtral Government may, by notification in the Official Gazette, specify. The amendment therefore, was clearly in favour of the widening the definition of 'seasonal factory'. The amendment is in the

nature of expansion of the original definition as it is clear from the use of the words 'include a factory'. The amendment does not restrict the original definition of "seasonal factory" but makes addition thereto by inclusion. The word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction, The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occur- ring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpreta- tion clause declares that they shall include. (See: (i) Stroud's Judicial Dictionary, 5th ed. Vol. 3, p. 1263 and (ii) C.I.T. Andhra Pradesh v. M/s Taj Mahal Hotel, Secun- derabad, [1971] 3 SCC 550 (iii) State of Bombay v. The Hospital Mazdoor Sabha & Ors., [1960] 2 SCR 866 at 875."

6. Learned counsel for the Respondent has contended that on inspection, it was found that the Appellant Factory has been manufacturing only Conventional Instant Coffee that requires additional process. The work being undertaken in the Factory clearly disclosed the fact that Appellant Factory falls within the purview of coverage of the establishment under the ESI Act, 1948. He has further contended that the application of Section 2(19A) of the Act, 1948 has been elaborately dealt with by a Division Bench of this Court in the case of ***The Deputy Director, Regional Office (Pondicherry), ESI, Pondicherry-605 004 vs. M/s.Hindustan Lever***

decided on 14.03.2019, wherein it has been culled out as under:

> "29. As pointed out earlier, the Hon'ble Supreme Court in the case of M/s.Highland Coffee Works, (supra), had not dealt with the restriction of working for a period not exceeding seven months in a year and the judgment cannot be relied on by the first respondent to support their stand that the factory engaged in blending and packing of tea exceeding seven months in a year is also included within the definition of seasonal factory. Furthermore, the decision does not state that blending and packing of tea is a manufacturing process and even assuming, if it is so, as the first respondent's factory works throughout the year, they will not fall within the definition of a "seasonal factory".
>
> 30. To be noted that the provisions of the ESI Act applies to all factories other than seasonal factories. The submission of the learned Senior counsel for the first respondent is that seasonal factories are outside the purview of the Act and the appellant is not justified in assigning a code number and compelling them to register under the Act. The ESI Act is a labour welfare legislation intended to protect the workmen. Therefore, liberal interpretation should be given so that the objects of the Act are achieved. The interpretation should also lean in favour of the working force for whose welfare the legislation was enacted. We do not agree with the submission that by being a seasonal factory, automatically the provisions of the Act cannot be made applicable to the first respondent.
>
> 31. This argument would be sustainable, if seasonal factory had not been defined under the Act. Section 2(19A) defines "seasonal factory", and a person who claims to be a seasonal factory should fall within the four corners of such definition. Therefore, the Act carves out an exception more or less akin to an exemption in respect of seasonal factories, provided the factory falls within the definition of 'seasonal factory' as defined under Section 2(19A). Therefore, there is no automatic exemption available as pleaded by the first respondent. Thus, for all the above reasons we are of the considered view that the order passed in the Writ Petition requires to be interfered.

32.In the result, the Writ Appeal is allowed and the order passed in the Writ Petition is set aside and the appellant is directed to proceed further pursuant to the proceedings dated 11.10.2004. No costs."

6.1. Learned counsel for the Respondent has further contended that the order passed by the Authority was in consonance with the provisions of the ESI Act, 1948 and the same need not be interfered with. If the Appellant Factory has got any grievance, they can very well invoke the appeal provision as adumbrated under Section 45AA of the ESI Act, 1948 within the time stipulated therein before the ESI Act interms of Section 75 of the ESI Act, 1948. Sections 45AA & 75 of the ESI Act, 1948 read as under:

> "**Section 45AA** - If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:
>
> Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation."
>
> Section 75 - Matters to be decided by Employees' Insurance Court.
>
> If any question or dispute arises as to?
>
> (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
>
> (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under section 55A on a review of any payment of dependants' benefit, or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act], such question or dispute, subject to the provisions of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely:

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation: Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

It is pertinent to mention here that the Apex Court in the case of ***P.Sarathy vs. State Bank of India***, reported in AIR 2000 SC 2023 held that the entire period during which the proceedings were pending has to be excluded. In this case, the order has been passed by the Authority under Section 45(A) of the ESI Act, 1948 and the employer has got three years limitation from the date of order excluding the period during which the Writ Petition is pending.

6.2. Learned counsel for the Respondent has also contended that the Appellant Factory, having admitted that they are manufacturers of conventional and instant coffee, cannot attempt to bend the Law according to its whims and fancies so as to portray as if they are not falling under the main clause of exemption granted to the manufacture of coffee and the Writ Appeal is liable to be dismissed, as it lacks merit acceptance.

7. Heard the learned counsel on either side and perused the material documents available on records.

8. The core issue to be decided in this case is whether the Appellant Factory can be construed as a seasonal factory or not? The Social Security Officer, after inspection, submitted a report, recommending that the Appellant Factory is liable to be covered under the ESI Act, 1948 and also for allotment of Code Number. Let us first analyze what are all the criteria for bringing a Factory under the purview of Seasonal Factory. According to the Respondent, the word 'seasonal' denotes that the activities of a Factory should take place in a particular period of time and the process of

manufacturing coffee beans from the coffee berries is seasonal in nature. The reason stated by the respondent for coverage of the Appellant Factory under the ESI Act, 1948, was that they procure coffee beans from 22 different vendors in Southern States, including Tamil Nadu and such procured beans are processed into coffee power in the factory situated at Hosur. Therefore, it cannot be said that they undertake works only during a particular period and without production of relevant materials to substantiate their stand, they cannot be simply branded as a seasonal factory.

9. Even though the learnred counsel for the Respondent has stated that the entire issue has got to be adjudicated by the Original Authority under Section 45(A) of the ESI Act, 1948, the parties have addressed their arguments on merits before the learned Single Judge. It is apparent from a reading of Section 2(19A) of the ESI Act, 1948 that the factory engaged in manufacturing process alone is excluded and can be termed as a seasonal factory. The original definition of seasonal factory specifies that the manufature of coffee is excluded and the amended provision has got an inclusive provision. In view of the amendment, the exclusion is applicable to a factory, which is engaged in the manufacture of coffee and in case an

establishment engages in any other process of blending, packing or repacking of coffee fore more than seven months in a year, such factory cannot be excluded from the provsions of the ESI Act, 1948.

10. The Respondent, based on the Survey Report dated 24.12.2010 of the Social Security Officer, issued a notice under Section 45(A) of the ESI Act, 1948 and thereby, the provisions of ESI Act, 1948 were made applicable to the Appellant Factory and the Officer also recommended for allotment of Code Number. The Social Security Officer has specifically stated that the Appellant Factory is engaged throughout the year which fact was affirmed by the learned counsel for the Appellant Factory. The Authority under Section 45(A) has considered the submissions of the Appellant Factory and came to the conclusion that there are direct and indirect employees working in the factory precincts. On a perusal of the order dated 25.03.2014 of the Authority, it is apparent that an opportunity of personal hearing was afforded to the representative of the Appellant Factory. For the sake convenience, the relevant paragraphs of the order dated 25.03.2014 are extracted below:

"Accordingly, the employer's representative, Shri.J.Premkumar, Manager, HR, has appeared in person and represented that the Act is not applicable to his factory as it is seasonal and according to Sec.2(19A), it should be excluded from the coverage. The following are the grounds of his dispute:

1) The factory is carrying out the manufacture of conventional and instant coffee including roasting, granuilizing, extracting, spray drying and packing. The sale of the product is carried out by M/s.Hindustan Unilever Ltd., Unilever House, BD Sawanth Mark, Chakkala, Anderi East, Mumbai-400 099, which is covered under Sec.1(5) of the ESI Act and the compliance is made through code no.35000100670000304..

2) The expanded provisions of the term seasonal factory under Sec.2(19A) that is manufacturing process which is engaged for a period not exceeding seven months in a year (a) in any process of blending, packing or re-packing of tea or coffee or (b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify, is not applicable to him as the coffee bean are procured from various parts of the country and conventional and instant coffee is manufactured including roasting, granuilizing, extracting, spray drying and packing.

3) The manufacturing activity is falling within the first part of the definition for which he has cited the rulings of the Honourable High Court of Calcutta in ESIC vs. Highland Coffee Works of PFX Saldanha and Sons (1991) 3 SCC 617 and Manager ESIC vs. Narasus Coffee Company."

Section 45A of the Act is extracted hereunder:

"(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Social Security Officer or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard:

Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B or the recovery under sections 45C to 45-I."

11. A reading of Section 45A of the ESI Act, 1948 shows that no order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable and the period for which contribution has been claimed in this case was between 01.04.2006 to 31.03.2010. The order was passed by the Authority on 25.03.2014, which is well within the time in terms of the provisions of the

Act. The order of the learned Single Judge in extending the coverage to the Appellant Factory on the ground that the contract employees are covered, may not be correct, as it is the duty of the Principal Employer, namely, Appellant Factory to pay the amount to the Respondent and thereafter collect the amount from the Contractors.

12. From the discussion mentioned supra, it is obvious that the Appellant Factory is involved in the manufacturing process for more than seven months a year and the Appellant has also admitted that they are running the manufacturing unit for 365 days, which is evident from the admission made by the representative of the Appellant Factory. Hence, we are of the view that the Appellant Factory cannot, by any stretch of imagination be excluded from the definition of Section 2(19A) of the ESI Act, 1948 and it cannot be treated as a seasonal establishment. The Appellant Factory has stated that there is an alternative remedy available to them and has referred to the judgment of the Supreme Court in the case of ***Radha Krishnan Industries vs. State of H.P. and others***, reported in ***(2021) 6 SCC 771***, wherein it has been held as follows:

"27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 26 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

13. If facts are in dispute, we would have certainly relegated the mattter to the ESI Court. In the case on hand, the Appellant Factory, having advanced arguments on merits before the learned Single Judge and obtained an adverse order, cannot now raise a plea of alternative remedy. Moreover, a careful reading of the judgment of the Apex Court (supra), alternative remedy is not a bar to entertain a Writ Petition and therefore, the decision quoted by the Appellant Factory is against them. It is needless to mention that the objective of the ESI Act, 1948, which is otherwise called as a beneficial legislation, is to offer financial benefits to enrolled workers during

sickness, pregnancy and any disability (permanent or temporary) due to employment injury. It is a duty cast upon the employer to pay ESI Contributions of the employer and employees, in view of the fact that medical expenses are sky-rocketing and in the event of any untoward incident, the employee or his family members should not be abjured in streets.

14. For the foregoing discussions and observations, we are of the view that there is no need for interference in the order of the learned Single Judge and the Appellant Factory cannot be treated as a seasonal establishment, consequent to their engagement in other process of blending,

S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.
ar

packing or repacking of coffee for more than seven months in a year in contravention to Section 2(19A) of the ESI Act, 1948.

15. In fine, this Writ Appeal is dismissed and the order of the learned Single Judge is hereby upheld. No costs. Consequently, connected miscellaneous petition is closed.

16. We appreciate the effective assistance rendered by Ms.G.Narmadha.

[S.V.N,J.] [R.K.M,J.]
26.06.2023

Index: Yes / No
Speaking Order: Yes / No
ar

To:

The Deputy Director,
Sub Regional Office (Salem),
Employees' State Insurance Corporation,
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem-636 009.

Pre-Delivery Judgment in
W.A.Nos.2836 of 2022