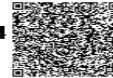




same falls within the definition of factory as defined under Section 2(12) & Section 1(15) of the Employees' State Insurance Act (hereinafter called the Act). The Establishment claims to have responded to the Corporation claiming that only 8 persons are working in its premises. 6 employees of the other concern cannot be included to make the Establishment amenable to the provisions of the Act. Vide communication dated 10.06.1994 the Establishment sought personal hearing. Without giving an opportunity to the Establishment notice impugned in the petition has been served. Appellant-Corporation contested the claim petition filed by the Establishment. It was claimed that the Establishment is in fact engaged in manufacturing of stainless steel utensils and not mere polishing. On the basis of pleadings raised by the rival parties ESI Court framed following issues :-

- “1. Whether the plaintiff partnership firm has not employed more than seven employees and the plaintiff firm does not fall within the purview of section 2(12) 1(15) of the EST Act ?OPP*
- 2. Whether the notice issued by the defendants to the plaintiff firm dated 30. 11. 1993 is illegal, without jurisdiction and is not binding on the rights of the plaintiff OPP*
- 3.Relief.”*

3 ESI Court after analyzing evidence on record came to the conclusion that the Establishment proved on record register Ex.PW5/A, receipts Ex.PW5/B to Ex.PW5/D, receipts of wages of the labour Ex.PW7/A to Ex.PW7/15. ESI Court held that from the perusal of the said documents, it is evident that at no point of time Establishment employed more than 7 persons for wages. ESI Court further held that there is nothing



on the file to prove that at the time of inspection, 14 workers or more than 7 workers were employed with the Establishment. Holding that the Establishment is not covered under the ESI Act, the ESI Court allowed the petition filed by the Establishment.

4 Learned counsel for the appellants submits that once the Establishment itself admitted that the survey was conducted on the premises, there is no reason to disbelieve the report of the officials. Documentary evidence in form of attendance sheet appended along with the inspection report evidently shows that there were 14 workers working for the respondent-firm on the date of inspection i.e. 20.10.1993. The same is counter signed by one of the partners. Thus the ESI Court erred in disbelieving the documentary evidence produced by the appellants which has resulted in perverse findings.

5 I have heard learned counsel for appellants and have gone through records of the case.

6 Counsel for the appellants has referred to RW1/B. He admits that even in that list there are only 9 workers mentioned. Though it mentions the name of partners, but none of them has signed the same. Vide Ex.RW 1/C though an attempt has been made to associate the Establishment with the other Establishment, however, there is no evidence with respect to there being any unity of management, unity of finance or unity of labour. RW1/D is the list of workers stated to be working in the other Establishment, but the same has been signed by a proprietor and not by partner. In view of these facts ESI Court found that from statements of PW1 to PW7 and the documents in form of attendance register and the wage



receipts, it is evident that at no point of time 7 or more employees worked with the respondents-Establishment. It being pure finding of fact, this Court finds no reason to interfere in the same.

7 Pure finding of fact has been returned by the ESI Court based on proper appreciation of evidence on record. This is an appeal filed under Section 82 of the 1948 Act.

8 Finding the appeal devoid of any substantial question of law, the same is ordered to be dismissed.

05.02.2025

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No