

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3947 OF 2017

Jessore Industries (India) Limited and Anr. .. Appellants

Versus

The Regional Provident Fund Commissioner & Ors. .. Respondents

ORDER

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.11.2010 passed by the Division Bench of the High Court of Calcutta in FMA No. 14 of 2010 by which the High Court has dismissed the said appeal and has confirmed the order passed by the learned Single Judge confirming the order dated 28.02.2007 passed by the learned Assistant Provident Fund Commissioner and the Assessing Authority, Employees' Provident Fund Organization, by which the assessing authority held that the appellant-establishment is not entitled to get the benefit of infancy as provided in Section 16(1)(d) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952

(hereinafter referred to as 'the Act'), the original writ petitioner has preferred the present appeal.

2. That one M/s. Veegal Engines and Engineering Ltd. was engaged in the manufacturing of small petrol engines for agricultural spray, fishing boat etc. The said company suffered a lock-out in the year 1986. The liquidation proceedings were initiated pursuant to the order passed by the High Court of Calcutta in Company Petition No. 293 of 1986. The assets of the aforesaid company were put to sell by the Official Liquidator. The sale notice was issued by the Official Liquidator on 28.02.1992. By an order dated 22.06.1992, the assets of the company (in liquidation) were sold to one M/s. Gunny Dealers, which emerged as the highest bidder at the Court-sale. At this stage, it is required to be noted that as such the land on which the company (in liquidation) was established belonged to the State Government. It appears that, at one point of time, the State Government, the owner of the land, decided to take over the assets of the company as a going concern. However, the same was not materialized and it was decided by the State Government to lease out the land including the shed and structure erected thereon to the purchaser for a period to be decided by the Court, provided the purchaser would protect the employment of the workers of the company by entering into a satisfactory agreement with the workers. The

purchaser agreed that it shall not change the nature and character of the sheds or structures without its prior consent in writing. It was further agreed that the purchaser would enter into agreement with the workers of the company (in liquidation). The purchaser entered into an agreement dated 14.06.1992 with the workers' union. It was stipulated that the new promoters would be at liberty to diversify and change the existing line of manufacturing motor-machines-parts to jute-based processing unit or any other type of manufacture at their sole discretion. It was further agreed that after renovating the existing factory building, the new promoters would install machinery for running the unit within six months and engage a maximum number of 150 of the workers of the company (in liquidation). It was further provided that in the said agreement the workers would be given training before absorption in the service and that the statutory and medical leave of the workers would be governed by the provisions of the Factories Act, 1948 and the E.S.I. Act, 1948 respectively. That, pursuant to the order dated 22.06.1992, the State Government leased out the land and other properties to the appellant herein- M/s Jessore Industries as the nominee of M/s. Gunnry Dealers. On 01.07.1993, the appellant-M/s Jessore Industries absorbed 150 workers of the company (in liquidation) and started the production with effect from 06.12. 1993 by manufacturing spare parts for the jute

machines and the plastic products. On 18.03.1994, the Enforcement Officers of the Provident Fund visited the establishment and sought to apply the provisions of the Act from the resumption of production in the factory. As the objection was raised by the appellant against the applicability of the provisions of the Act contending that in view of the provisions of Section 16(1)(d) of the Act it was entitled to the benefit of infancy as a newly set up establishment launched on 01.07.1993 when it started providing employment to the workers. The Provident Fund Organization did not accept the aforesaid contention and directed the appellant to comply with the provisions of the Act with effect from July, 1993 as a going concern. The order passed by the Provident Fund Organization came to be confirmed by the learned Single Judge. It further came to be confirmed by the Division Bench of the High Court by the impugned judgment and order. Hence, the original writ petitioner is before this Court claiming the exemption under Section 16(1)(d) of the Act on the ground that it was a new establishment and the same cannot be said to be a going concern.

3. The learned counsel appearing on behalf of the appellant has vehemently submitted that, in the facts and circumstances of the case, the High Court has materially erred in treating the appellant establishment as a going concern and not considering the appellant as

a new establishment. It is submitted that therefore the High Court has committed a grave error in holding that the appellant shall not be entitled to exemption under Section 16(1)(d) of the Act as a new establishment.

3.1 The learned counsel appearing on behalf of the appellant has vehemently submitted that considering the fact that the company (in liquidation) came to be closed in the year 1986 and thereafter the appellant purchased the scrapped machinery and thereafter installed altogether a new machinery and came out with a altogether new production, the appellant establishment can be said to a new establishment and, therefore, entitled to the exemption under Section 16(1)(d) of the Act. It is submitted that, in the aforesaid facts and circumstances of the case, it cannot be said that the appellant can be said to be a running establishment/factory.

3.2 It is further submitted by the learned counsel appearing on behalf of the appellant that therefore, in the facts and circumstances of the case, the High Court has materially erred in relying upon the decision of this Court in the case of **Sayaji Mills Ltd. v. Regional Provident Fund Commissioner** [1984 (supp) SCC 610].

3.3. It is further submitted by the learned counsel appearing on behalf of the appellant that even as per the agreement entered into

between the purchaser and the employees' union dated 14.06.1992, the purchaser was required to absorb maximum 150 willing and physically fit persons and that too as fresh employees. It is submitted that, therefore also, the appellant establishment cannot be said to be a running establishment. It is submitted that, therefore, the High Court has materially erred in rejecting the claim of the appellant establishment claiming the exemption under Section 16(1)(d) of the Act as a new establishment.

4. The learned counsel appearing on behalf of the respondents has opposed the present appeal and has supported the impugned judgment and order passed by the Division Bench of the High Court. It is vehemently submitted that there are concurrent findings of fact recorded by the Assessing Authority, the learned Single Judge and the Division Bench of the High Court that the appellant cannot be said to be a new establishment and it can be said to be a running establishment.

5. Heard learned counsel appearing on behalf of the respective parties at length. The short question posed for consideration of this Court is whether, in the facts and circumstances of the case, the appellant is entitled to the exemption claimed under Section 16(1)(d) of the Act as a new establishment?

6. At the outset, it is required to be noted that, as such, there are concurrent findings of fact recorded by the Assessing Authority, the learned Single Judge and the Division Bench of the High Court holding that the appellant establishment is a running establishment and cannot be said to be a new establishment.

7. Even otherwise, even on merits and considering the decision of this Court in the case of **Sayaji Mills** (supra), it cannot be said that the High Court has committed any error in holding that the appellant establishment is a running establishment and in not treating and/or considering the appellant establishment as a new establishment. It is required to be noted that as per the sale notice issued by the Officer Liquidator what was sold in the Court-sale was the assets of the company (in liquidation) and not the scrapped machinery. As per the condition imposed by the State Government while leasing out the land in favour of the purchaser, the purchaser/appellant was required to maintain the position of the factory as it is. The purchaser was under an obligation to employ a maximum 150 employees. Nothing is on record that in fact the entire plant and machinery was scrapped and altogether new machineries were installed. On the contrary, it appears that after some renovation and by installing some additional machinery, the appellant-purchase went ahead with the production.

As rightly observed and even as per the decision of this Court in the case of **Sayaji Mills** (supra), merely because the purchaser went ahead with a new product, by this itself, it cannot be said to be a new establishment. The decision of this Court in the case of **Sayaji Mills** (supra) would be squarely applicable to the facts of the case on hand. Applying the law laid down by this Court in the case of **Sayaji Mills** (supra) to the facts of the case on hand, it cannot be said that the High Court has committed any error in not accepting the case of the appellant as a new establishment. The High Court has rightly observed and held that the appellant shall not be entitled to the benefit of exemption under Section 16(1)(d) of the Act. We are in complete agreement with the view taken by the Division Bench of the High Court.

8. In view of the above and for the reasons stated above, the present appeal fails and deserved to be dismissed and is accordingly dismissed. No costs.

.....J.
[M. R. SHAH]

NEW DELHI,
MAY 29, 2019.

.....J.
[A.S. BOPANNA]

ITEM NO.108

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3947/2017

JESSORE INDUSTRIES (India) LTD. & ANR.

Appellant(s)

VERSUS

THE REGIONAL PROVIDENT FUND COMMR. & ORS.

Respondent(s)

Date : 29-05-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE A.S. BOPANNA
(VACATION BENCH)

For Appellant(s)

Mr. Himanshu Shekhar, AOR

For Respondent(s)

Mr. Karunakar Mahalik, AOR
Mr. Durga Dutt, Adv.
Mr. C.P. Singh, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(MANISH SETHI)
COURT MASTER (SH)(RAJINDER KAUR)
BRANCH OFFICER

(signed order is placed on the file)