

Submitted please

Sub- Conduct of surprise physical verification of the covered establishments

Vide this office lt. no. dt. 16.7.15 on the subject, Director I/C, SRO Surat has been asked to furnish his comment and grounds for undertaking surprise visits without the approval of CAIU.

COMMENTS OF SRO

1. Written and oral complaints have been received regarding heavy under-reporting of employees by the Dyeing & Printing Units situated in Surat. The number of such complaints received from various sources in writing during 01.04.2014 to 31.03.2015 is 188.
2. During accident investigations, the Branch Manager used to report uncovered employees detected.
3. The compliance reported by the industry was at huge variance to the size of the industry. The compliance was extremely low.
4. An effort was made during the month of October and November, 2014 to visit some of these units. The process confirmed the fact of heavy under compliance and large scale evasion of contributions.
5. The South Gujarat Processing & Textile Association (SGPTA) had a meeting with ESIC officers on 09.12.201, where they admitted to have been undertaking this form of organized evasion and they assured to persuade their members to comply with the provisions under ESI Act in earnest. Taking into consideration their assurance, all assistive visits & headcounts were stopped.
6. SGPTA had sent a representation to Secretary Labour, Ministry of Labour & Employment, Government of India in this regard, highlighting the issue on 25.02.2015(Enclosed as Annexure -A), which was forwarded to this office for examination and appropriate reply to the said Association. Reply was given on 01.05.2015 (Enclosed as Annexure -B).
7. The reply given by the SGPTA vide their letter dated 12.05.2015 (Enclosed as Annexure -C) is confirmative of the fact of organized evasion and their efforts to clean up after the actions initiated by this office.

A few examples of trends of the compliance made by such employers (i.e Pre and Post Assistive head count) are as under:

Sr. No.	Name of Unit	Code No.	Date of Visit	No. of employees during Headcount	Before assistive visit/Head Count		After assistive visit/Head Count		Increase in Compliance	
					Avg. No. of Emp. Reported	Avg. Mon. Cont.	Avg. No. of Emp. Reported	Avg. Mon. Contr.	No. of IP	Contribution
1	M/s Ratnapriya Dyeing & Printing Mills	39000342770000199	8/12/2014	742	198	39587	426	83982	228	44395
2	M/s Ameen Silk Mills Ltd.	39000190650000199	2/12/2014	391	147	18274	252	62431	105	44157
3	M/s Ganesh Laxmi Processors Pvt. Ltd	39000340140000107	27/01/2015	360	342	79199	500	120328	158	41129
4	M/s. Ambaji Dyg. & Ptg. Mill	39000133580000199	26/11/2014	164	251	17155	327	55738	76	38583
5	M/s Geecanjali Creation	39000528540000199	13/01/2015	159	36	14070	136	45043	100	30973
6	M/s. Kanhaiya Processors Pvt. Ltd.	39000196430000199	24/11/2014	169	97	6653	145	37109	48	30456
7	M/s Sudha Dyeing & Printing Mills Pvt. Ltd	39000211220000199	2/12/2014	24	224	26148	177	52765	-47	26617
8	M/s. Shree Laxminarayan Synthetica	39000190520000199	25 & 27/03/2015	103	43	5747	116	32127	73	26380
9	M/s Ritika Embroideries	39000315560000199	19/01/2015	276	100	10761	136	36830	36	26069
10	M/s. Dineer Industries Ltd.	39000341230000101	25/04/2015	615	659	260042	819	284636	160	24594
11	M/s Jay Tex Silk Mill	39000171190000199	23/12/2014	208	82	16214	157	39827	75	23613
12	M/s Kadmawal Dyeing & Printing Pvt. Ltd.	39000341020000199	04 & 05/12/2014	76	156	25239	157	46880	1	21641
13	M/s Keshav Creation Pvt. Ltd.	39000317810000199	13/01/2015	165	73	8543	79	25049	6	16506
14	M/s Jai Mata Di Dyeing & Printing Mills	39000341370000199	15/12/2014	186	261	26111	222	38788	-39	12477
15	M/s Dase Embroidery Pvt. Ltd.	39000317150000199	6/1/2015	140	27	9269	59	21714	32	12445
16	M/S ASOPALAV CREATION PVT. LTD	39000315200000199	28/11/2014	41	12	4922	256	16994	244	12072
17	M/s Shree Mahadev Silk Mills Pvt. Ltd	39000340630000199	8/12/2014	248	240	34506	248	45651	8	11145
18	M/s Saisar Dyeing & Printing Mill P Ltd	39000341950000199	22/12/2014	70	121	18479	130	28776	9	10197
19	M/S Mahavir Hamiteens Private Limited.	39000521980000-99	12/11/2014	67	21	4613	71	13855	50	9242
20	M/s Rani Sati Silk Mills Pvt. Ltd	39000526060000199	30/01/2015	64	8	3351	34	11517	26	8166
21	M/s Mahesh Dyeing & Printing Mills P. Ltd.	39000340620000107	22/04/2015	242	129	21956	192	29588	63	7632
22	M/s. Shree Meena Life Style	39000527540000199	25/11/2014	78	13	4895	19	9231	6	4336
23	M/S Abhinav Silk Mills	39000318860000199	12/11/2014	62	7	2118	19	4555	12	2427

Surat
20/12/15
1/12/15

OBSERVATIONS

1. Mandate of the CAIU is to analysis and frame policy for Regular Inspection of units to be marked randomly through the system and also to give out of turn approval for Regular Inspection of the units in specific complaint cases/ etc., after duly examining the facts of the case.
2. After the set up of CAIU, all the regions had forwarded the complaints lying with them, to this unit for the approval of Inspection of records to deal with the content of the complaints.
3. Since, large no. of complaints were forwarded without furnishing the facts about the unit's past and existing compliance, complaint details and recommendation, the same had been returned back to them with specific direction that only those complains be forwarded to CAIU which require inspection of records to deal with the complaints.
4. Surprise Physical Verification to deal with the complaint cases received at regions were being done by the regions itself and only those cases were forwarded which require regular inspection of the records of the covered units.
5. The direction issued earlier has been reviewed with a view that complaint relating to concealment/ under-reporting cannot be dealt without the inspection of records. Accordingly, fresh instructions vide this office letter No. S/HQ/2/2015-CAIU dated 18.06.2015 (Annexure- D) has been issued to all the regions, directing therein not to conduct even surprise physical verification of the unit, without the approval of CAIU.
6. SRO Surat had pleaded that they were not aware, till the instruction dated 18.06.2015 was issued by CAIU, that even Surprise Physical Verification of the units are also banned under new policy without clearance from CAIU.
7. They conducted the Surprise Physical Verification only after the strict scrutiny of last 4-5 year's compliance as available in the system. In cases where the compliance of these units were very low, surprise checks were conducted.
8. In these surprise checks, huge no. of concealment and under reporting was detected. Subsequent to such efforts, the number of employees, average number of working days and contribution amount paid by these units increased substantially.
9. As per the table illustrated above, the evasion/under compliance by these employers is very much evident. Consequent upon such surprise checks the compliance with regards to coverage/ contribution amount and average no. of days per IP/ Months has improved drastically. These surprise checks works as a deterrent effect and encourages self compliance by these errant employers.

CORRECTIVE MEASURES

Vide CAIU letter dated 18.06.2015, the ambiguity about conduct of Surprise Physical Verification without the approval for Regular Inspection by CAIU has been removed and all the region concerns has been categorically directed to forward all such complaint cases which require Surprise Physical Verification.

To streamline the things further, it is proposed that regions may be instructed to keep continuous check on the variation of compliances of such errant units and analyze it with respect to sharp variation in no. of Employees, contribution, Average no. of days per IP, etc. and based on that they may forward such cases to CAIU for taking decision for requirement of Surprise Physical Verification and/or Regular Inspections of the unit.

Submitted for kind perusal and order please.

Dir (CAIU)

22/7/15

The matter under consideration relates to a representation (flagged) from **The Southern Gujarat Chamber of Commerce & Industry, Surat**, submitted to this office personally on 16.07.2015 by Shri Chandan Paliwal of **M/s Sudha Dyeing & Printing Mills Pvt. Ltd., Surat** alleging therein that - "Many of their members have complained of strict action being taken by ESIC by visiting the units and enquiring deeply for the past five years records, issuing notices for heavy recovery with penalties and asking information to labourers/workers, who do not have any idea and on the basis of present situation they take average of last five years for claiming arrears".

With the above allegation, the Association has requested that the officers of the ESIC should keep touch of Office Bearers of the Association and their visits should be educative and not so harsh. The flow of instructions should move from Hqrs. to Local Offices and Local Officers should take representatives of industry in confidence before taking action.

In the light of above, comments/factual position was called from SRO Surat which has been received vide PUC mail dated 21.07.2015, according to which, the facts are as under:-

- (1) Keeping in view repeated written/oral complaints (188 in 2014-2015) regarding heavy under-reporting of employees by Dyeing & Printing Mills in Surat, in addition to detection of such uncovered employees by Branch Manager while visiting such units for investigation of accident cases. Majority of the **fatal accident cases** used to get ESI Registration after accident pointing to the rampant under-reporting in employment in employment strength. Otherwise also compliance, reported by the industry, was at huge variance to the size of the industry.
- (2) Under such circumstances, SRO Surat, after analysis of the compliance trends of the some well-known and bigger Dyeing & Processing Units, had undertaken an exercise in October-November, 2014, to visit some of these units to make them aware of the requirements under ESI Act for proper compliance and also to help them to register all the coverable employees. Head counts of total employees was also conducted in this exercise. SRO has submitted details of such 23 units visited by them and no. of employees detected as coverable but not covered which included **M/s Sudha Dyeing & Printing Mills Pvt. Ltd.** also. While handing over the representation, Shri Paliwal has also given names of five other units also, against

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which the reported action was being taken which are also included in the list, which are given in the list at page-30/N ante at Sl.No.1, 2, 4, 6, 7 and 14 in which 742 (198), 391(147), 164(251), 169(97), 24(224) and 186(261) employees were detected against employees on records in brackets respectively. Where the no. of employees in physical count have been found lesser number than in records, the actual employees for compliance as per man days of work, were to lower side and contribution was being paid much less than the actually payable which is evident from the details of average monthly contribution given in the list for period prior to such visits and post visits - e.g. **M/s Sudha Dyeing & Printing Mills** has paid Rs.2,49,511/- in five months from January, 2015 to May, 2015 for 879 employees whereas it has paid Rs.130623/- for 1163 employees in preceding five months (prior to visit) and similar has been the case of almost all other units visited by the team. Details may kindly be perused at page-30/N.

- (3) After such visits and on initiation of follow-up action, a similar representation dated 25.02.2015, was given by South Gujarat Textile Processors Association, to Secretary (L&E), Govt. of India, which was sent to SRO Surat for appropriate action and reply and in that response, SRO Surat has replied to the Association vide their letter dated 01.05.2014, duly acknowledged by the Association vide their letter dated 12.05.2015, show that after conducting such visit in October-November, 2014, Officers of SRO ESIC attended a conference on 09.12.2014 on invitation from the Association and this problem of under-reporting of employees, was discussed in detail and the office bearers also appreciated the problem/resultant action and assured of improvement in compliance. The details of compliance by the units visited by ESIC as are available at page-30/N ante also show a considerable increase in revenue and compliance.

In view of the above details, it is apparent that **under-reporting of compliance under ESI Act by such units is rampant at very large scale by reporting lesser wages by curtailing actual man days and by showing working employees as absent/on leave and also keeping no. of employees without enrolment on records and action taken by SRO appears to be bona fide and in the interest of poor workers and the ESI Scheme as well.** They have also heard to the Association people by attending their conference and keeping in abeyance the visits for three months on their request and assurance for improvement in compliance by registering more workers. Association people have also accepted the problem of under-reporting.

Under the above circumstances, it is proposed that -

1. Since, we have already reiterated through our circular dated 18.06.2015 to all field offices, not to undertake such physical verification, without approval from Hqrs. and thus, they shall not be undertaking such visits in future, we may inform to the President, The Southern Gujarat Chamber of Commerce & Industry (SGCCI), accordingly, as they have requested in their representation for flow of such instructions from Hqrs. to field offices.

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From pre-page:-

2. Since, SGCCI has already stated that they have requested to their members to obey rules and comply the requirement of ESI Act and regular visits and inspection from department for implementation and compliance, acceptable to them and they don't object it, we may request them, in the light of the results of the visits conducted by ESIC, to impress upon the member industries to ensure compliance under ESI Act properly so as to avoid complaints and resultant actions in future.
3. We may also advise Director Incharge, SRO Surat to have a meeting with SGCCI and also with other prominent employers' associations to discuss the problems of under-reporting and also to hear their grievances and to sort out the issues by taking the details of the cases, in which SGCCI is alleging very harsh action.

Submitted for perusal and orders please. Draft letters to President SGCCI and SRO Surat are also submitted for approval please.

ACC (S) Incharge
8 L.C. (Rev)

[Signature]
27/7

Kindly see the proposal of the Branch from prepage on the reply of the Director in-charge Surat dt 20.7.2015. wherein they have adduced bonafide on the part of Director SRO, Surat confirming that rampant under compliance was reported in almost every unit where headcounts were carried on. Though I agree with the same my additional observations are as under

1. The Officer, in his report has confirmed

that his office had been
receiving written and oral
complaints regarding heavy
minder reporting of employees
during 1.4.2014 to 31.3.2015

Instructions confirming that against
above background a study of
compliance trends was carried
out which was followed by visits
for awareness / headcounts etc.

Here the SPO in charge
has certainly exceeded his brief.
What was expected of him to
forward all such complaints/
study to CAIV at HQSS and
only after approval of CAIV, to send
the unit for visits by the Inspectors/
SSO.

The Officer has submitted
that his office was not aware
that even such visits are
barred under new policy without
clearance from the CAIV, ES/HQSS.
till the instruction dt 18.6.2015
was issued.

In fact the moment
the undersigned came to know

that some of the field officers are wrongly interpreting the instruction issued on the subject, in the sense that deploying officers/SSO based on the complaints, for head counts is not part of the Inspector and as such not based, the undersigned issued the instruction dt 18.6.2015. The officer is confident that thereafter no such visits have been undertaken by his office

At the end I would only say that though with bonafide intentions, yielding substantial positive results, the visits by the Inspectors can't be justified.

"ENDS CAN'T JUSTIFY THE MEANS"

However considering that the officer has himself submitted that he was not aware and has acted bonafid and after issue of instⁿ dt 18.6.2015 by the CAC followed the same in letter and spirit a lenient view may be taken

For kind orders

[Signature]
23.7.2018

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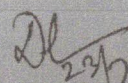
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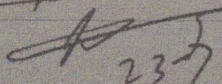
Ref. note on pre page.

Earlier also there was a complaint from South Gujarat Textile Processors Association on the same issues.

There appears to be gross violation of Government instructions that too knowingly. It is a serious matter.

In view of a submission and also the notings on pre page, before any action for this indiscipline is taken, let the Regional Director, Ahmedabad inquire into all the cases and submit a report. In the meantime, the Director I/c, SRO, Surat and Deputy Director, should be posted in areas other than Revenue till the Inquiry Report is submitted and decision taken by the Corporation.


Director General

AC (Law) / CAIU

IC (P&A) 23-7