



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 2751 OF 2016 (ESI)

C/W

MISCELLANEOUS FIRST APPEAL NO. 2157 OF 2016 (ESI)

IN MFA No. 2751 OF 2016

BETWEEN:

M/S. RAJESH EXPORTS LIMITED,
(RED BUILDING), PLOT NO.2,
ROAD NO.8, EXPERT PROMOTION,
INDUSTRIAL PARK WHITEFIELD,
BANGALORE-560 066.
REP. BY ITS GENERAL MANAGER,
SRI. R. DWARKINATH.
NOW AT,
NO.4, BATAVIA CHAMBERS,
KUMARAKRUPA ROAD, KUMARA PARK EAST,
BANGALORE-560 001.
REPRESENTED BY ITS
MANAGING DIRECTOR.

...APPELLANT

(BY SRI. PRASHANTH B.R., ADVOCATE)

AND:

THE RECOVERY OFFICER
ESI CORPORATION,
NO.10, BINNYPET
BANGALORE-560 023.

...RESPONDENT

(BY SMT. GEETHADEVI M.P.,ADVOCATE)



THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 82(2) OF EMPLOYEES STATE INSURANCE ACT, AGAINST THE ORDER DATED:25.1.2016 PASSED IN ESI.NO.25/2010 ON THE FILE OF THE EMPLOYEE STATE INSURANCE COURT, BENGALURU, PARTLY ALLOWING THE APPLICATION FILED UNDER SECTION 75 OF THE ESI ACT, 1948.

IN MFA NO. 2157 OF 2016

BETWEEN:

THE RECOVERY OFFICER,
ESI CORPORATION,
NO.10, BINNYPET,
BANGALORE-560 023.

...APPELLANT

(BY SMT.GEETHADEVI M.P., ADVOCATE)

AND:

M/S. RAJESH EXPORTS LIMITED,
(RED BUILDING), PLOT NO.2,
ROAD NO.8,
EXPERT PROMOTION,
INDUSTRIAL PARK WHITEFIELD,
BANGALORE-560 066.
REP. BY ITS GENERAL MANAGER,
SRI. R. DWARKINATH.

...RESPONDENT

(BY SRI.RAGHU HULIKAL, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 82(2) OF THE EMPLOYEES STATE INSURANCE ACT, AGAINST THE ORDER DATED:25.01.2016 PASSED ON ESI NO.25/10 ON THE FILE OF THE EMPLOYEES STATE INSURANCE COURT, BENGALURU, PARTLY ALLOWING THE APPLICATION FILED U/S.75 OF THE ESI ACT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.09.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **UMESH M. ADIGA J.**, PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV COMMON JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

These appeals are directed against the order dated 25.01.2016, passed in E.S.I. Application No.25/2010, by the Employees' State Insurance Court, at Bengaluru, (for short `ESI Court').

2. MFA.No.2157/2016 is admitted to consider the following substantial question of law:

"Whether the ESI Court is justified in disallowing the claim towards contributions under Heads of Accounts at Nos.2 to 9 contrary to the provisions of Section 45A (2) of Employees' State Insurance Act, 1948"?

MFA.No.2751/2016 is admitted to consider following substantial question of law:

"Whether the claim made by the respondent towards ESI contribution on Heads of Account "Salaries and Wages is tenable in law"?



Both the cases were taken up together before this Court for hearing. Inadvertently substantial question of law was not framed in MFA.No.2157/2016. In the appeal memo, appellant has noted "draft substantial question of law." Both parties have understood the substantial question of law involved in this appeal and argued on that lines. Hence, no need to once again post the case for hearing just to frame substantial question of law. Hence, during dictation of the judgment, substantial question of law has been framed.

3. Brief facts of the case are that, Inspection Officer of Employees' State Insurance Corporation (for short, 'ESI Corporation'), visited the office of M/s Rajesh Exports Limited, (for short, 'Company'), between 20.09.2005 and 21.10.2005 and conducted inspection and booked amount of Rs.54,04,81,122/-, on which the contribution was determined at Rs.1,19,03,054/-. Accordingly, an order was passed by the ESI Corporation. The Inspection Officer while booking the amount did not properly verify the



records and books of accounts. Hence, an opportunity of personal hearing, was given to the company. During hearing, the company produced some of books of accounts and other materials before Deputy Director of ESI Corporation. The Deputy Director passed an order dated 07.08.2008 and assessed the contribution of the company.

4. The company, aggrieved by the order passed by the Deputy Director of ESI Corporation, sent letter dated 08.11.2008 to the Director General, ESI Corporation, New Delhi, for rehearing the matter and to re-determine the contribution of the company. The said representation was considered and allowed by the Director General, ESI Corporation and directed the concerned to re-hear the matter giving an opportunity to the company. The officers of the ESI Corporation, after re-verification of records of the company and rehearing the case over the period of two months, passed an order dated 12.04.2010 and re-determined the contribution payable as Rs.33,93,286/-.



5. The said order was challenged by the company before the Employees' State Insurance Court at Bengaluru, (for short, 'ESI Court'), in ESI Application No.25/2010. The learned Presiding Officer of the ESI Court recorded the oral and documentary evidence of both sides and after hearing the matter, passed the impugned order dated 25.01.2016. The ESI Court partly allowed the application; the appellant-Company was directed to contribute Rs.18,00,000/- under the head 'Salaries and Wages' and rejected the claim of the ESI Corporation on other Heads of Accounts stated at Sl.Nos.2 to 9. Being aggrieved by the same, both the parties have preferred the above said appeals.

6. Heard the arguments of learned counsels for both side and perused the materials on record.

7. The learned counsel for ESI Corporation vehemently contends that when once the responsible officer passed an order under Section 45A of the ESI Act, it cannot be brushed aside without sufficient materials.



The ESI Corporation claimed contributions under nine heads and requested the company to furnish the account books and the supporting materials, however no reliable materials were placed on record. Even before the ESI Court, it produced Exs.A-1 and A-2 i.e., salary paid register, as well as Muster Roll. Those documents *prima facie* appear to be created just to deny the contributions. For example, names of employees are mentioned without their designation, their date of appointment and salary particulars etc., Even though an employee remained absent continuously for several days in a month, the company except deducting his salary for the said period of absence, no action was initiated against such employee. Hence, those materials are not reliable. Even the contention of the company that their salary was less than coverage limit was also not proved.

8. Learned counsel for the ESI Corporation has further submitted that the company constructed factory building for expansion of its business and to construct the



building, it engaged labourers. The company also got prepared furniture and fixtures, and for that purpose, it engaged labourers. The company also purchased plant and machineries and to install the same, it had engaged the labourers. Company is contending that it has outsourced the preparation of jewellerys and was paying charges for the same. It is nothing but contract labour. As per Section 2(9) of ESI Act, any persons engaged by the company either on temporary or permanent basis are employees of the company. Such employees are entitled for benefit under the ESI Act. Hence, company is liable to pay contribution towards such employees. The ESI Court has not considered the same and rejected it, which needs interference by this Court.

9. The learned counsel for the company submitted that the company had produced relevant records before the ESI Court. It is not necessary that in every case, enquiry has to be initiated for the absence of an employee. Therefore, not initiating any action does not mean that the



records are concocted. He contends that Exs.A-1 and A-2 show the names of employees, their salary, number of days they worked and salary paid to them. The concerned employees signed on the salary payment register without any objections. Moreover, their salary is below the coverage limit. Under such circumstances, company was not liable to pay contributions to the ESI Corporation. The learned Presiding Officer of the ESI Court without considering the materials on record, erroneously directed the company to contribute the amount under the head "Salaries and Wages", which is erroneous and therefore, prayed to set aside the said part of the order.

10. The learned counsel for the company further submits that company has its registered office at Kumara Park. It started its factory in Whitefield area during 2002 after obtaining necessary certificates from the concerned authority. Hence, construction of building was not ancillary to main business of the company. Similarly, company had not engaged labourers for preparation of



furniture. On the contrary, it had placed orders to M/s.Alankar Furniture. The said concern prepared them in its factory premises and said concern deputed its employees and installed the furniture in company premises. The company placed orders for plant and machineries to its dealers and the said dealers installed the plant and machineries through its employees who were experts in installing the same. The above said employees worked in the company under the control and supervision of their respective concerns. Such workmen cannot be called as "employees" of the company under the ESI Act.

The learned counsel for the company further contended that company imports gold and places orders to the dealers who undertakes the preparation of jewellerries on payment of required charges. Even they are not prepared in the company premises. The employees of such concerns are not employees of the company. Hence, company is not liable to pay contribution of such



labourers. The ESI Court considered all these facts and rejected the claim of ESI Corporation. That part of the order does not call for interference. Hence, prayed to allow the appeal filed by the company and dismiss the appeal of ESI Corporation.

11. The claim of ESI Corporation calling upon the company to contribute Rs.33,93,286/- under different heads are as follows:

SL. NO .	Item	Amount of wages	Contributions	Period
1	Salary and Wages	34376813.00		2001-2002
2	Labour Charges	1521982.00		2000-2001
3	Building	262597580.00		2001-2003
4	Furniture and Fixtures	4296783.00		2001-2003
5	Plant and Machinery	203272736.00		2000-2003
6	Making charges	2521999.00		2001-2002
7	Making charges	25663219.00		2002-2003
8	Vehicle Maintenance	29250.00		2001-2002
9	Vehicle Maintenance	6200760.00		2002-2003
	Total	54,04,81,122.00	3,51,31,273.00	



The claim of ESI Corporation of Rs.18,92,230/- is the contribution towards 'Salaries and Wages'. The said claim is approved by the ESI Court. (However, the ESI Court without any reasons restricted it for Rs,18,00,000/-). This part of order of ESI Court is challenged by the company.

12. The company produced Exs.A-1 and A-2 i.e., copies of Salary paid register, as well as Muster Roll. The Deputy Director of ESI Corporation by assigning reasons, directed the company to pay contributions by his order dated 12.04.2010. The ESI Court concurred with the said findings. On re-appreciating Exs.A-1 and A-2, the submission of learned counsel for the ESI Corporation is tenable. Ex.A-2 shows that a number of permanent employees worked in the said company for different months. The number of employees who worked in each month is not same. PW-1 did not explain anything regarding the said facts.

Exs.A-1 and A-2 discloses that some of the employees were irregular and company has not bothered



about it. No disciplinary action was initiated against the employees who were irregular in attending duties, except deducting their salaries. The company had not produced any material to show that those were authorised leave. These facts create doubt about Exs.A-1 and A-2.

13. Though sufficient opportunities were available to the company, it did not produce relevant records to clear the doubts before the responsible officers of the ESI Corporation. Hence, ESI Corporation was unable to know the correctness of the documents produced before it. All the employees, irrespective of their cadre and number of years of service, were said to be drawing same amount of salary. These facts also create doubt about documents/ evidence furnished by the company.

14. The submission of learned counsel for the ESI Corporation that these documents were created after passing of the orders by responsible officer of ESI Corporation as per Ex.R-10 also cannot be ruled out. In view of these reasons, we are of the opinion that the said



findings of the ESI Corporation in Ex.R-10 and ESI Court directing the company to pay contribution under the head 'Salaries and Wages' is tenable and it does not call for any interference.

The ESI Court reduced the amount claimed by the ESI Corporation of Rs.18,92,230/-, but ESI Court restricted it to Rs.18,00,000/- without any reasons. Hence, it needs modification. The substantial question of law framed in this regard needs to be answered in the negative, with above modification.

15. The learned counsel for the ESI Corporation submits that this Court, as well as Hon'ble Apex Court consistently held that the daily wage workers who participated in the construction work shall be considered as employees of the company and hence, company is liable to pay contribution on their behalf.

16. The learned counsel for the company submits that if construction of building is ancillary to the main function, then only such employees could be considered as



"employees of company." In this case, the company had not taken up new construction for expansion of its business, but it has constructed new building for its factory for preparation and sale of gold ornaments in the said premises. In the case of ***Managing Director, Hassan Co-operative Milk Producer's Society Union Limited - vs- Assistant Regional Director, Employees' State Insurance Corporation,***¹ this point is clarified by the Hon'ble Apex Court and hence, company is not liable to pay contribution to such construction workers.

17. In Ex.R-10, the ESI Corporation assessed contributions payable by the company under the Heads at Sl.Nos.2 to 9, with reasons to assess the same. The ESI Corporation considered the contentions of the employer in respect of the said expenses. The employer submitted before the Deputy Director of ESI Corporation that the commercial production at Whitefield started only from 01.01.2002 and hence, contribution towards the labour

¹ (2010) 11 SCC 537



charges for the construction of the buildings spent after that period i.e., from 01.01.2002 only is payable. The company appears to have furnished the Certificate dated 15.12.2001 given by Chartered Engineer, Possession Certificate dated 10.04.1997 from KIADB and certificate dated 28.8.2000 issued by State Factory and Boiler Department. The officers of ESI Corporation on consideration of other documents referred in the said order, held that the building was constructed for expansion of business and hence the employer is liable to pay contribution from that date onwards till 31.03.2003.

18. The ESI Court rejected the said claim of ESI Corporation on the ground that commercial business was started from 1.1.2002 and the said premises is situated about 25 kms away from the Head office of the company. The construction workers were not employees of the company. Hence, the employer is not liable to pay the contribution.



To answer this question, it is necessary to decide as to whether the construction workers were employees of company or not. In this regard, judgments relied by both sides need to be discussed.

19. In the case of ***The Regional Director, ESI Corporation, Bengaluru -vs- M/s. Survarna Saw Mills, Mangaluru, decided on 22nd February 1979,***² a Full Bench of this Court, interpreting Section 2(9) of ESI Act, held that,

" The definition of the word 'Employee' contained in Section 2 (9) of the ESI Act does not make any difference between a casual or temporary or permanent employee. It is wide enough to include even the casual employee employed for a day for wages. Therefore, every person who is employed for wages on any work connected with any work of a factory or establishment to which the Act applies, except those exempted by the definitions falls within the definition of the word 'employee'. Section 38 of the Act specifically states that all employees in the factories or establishments to which the Act applies shall be insured in the manner provided by the Act.

² ILR 1979 KAR 1847



Having regard to the definition of the word 'employee' contained in Section 2 (9) of the Act and Sections 38 and 39 of the Act, casual employees are also governed by the provisions of the Act."

20. In the case of **M/s. Escort Ltd., -vs- Regional director, ESIC**,³ the Division Bench of this Court interpreting Section 2(9) of the ESI Act held that;

" The definitional-net is kept, designedly wide and comprehensive to promote the beneficent objects of the legislation. There need not be a direct master-servant nexus. Any person engaged by or through an "immediate employer" such as a contractor, would also, inter alia, become employee if he is employed on the premises of the factory on work which is preliminary to the work carried on or incidental to the purposes of the factory. The expressions "preliminary" or "incidental", consistent with the objectives and purposes of this piece of beneficent and social welfare legislation must receive a liberal, and not a restrictive, construction so as to promote the social objectives."

In the similar facts and circumstances of this case, in the above said judgments, it is held that the employee of

³ ILR 1995 KAR 3595



the contractor who worked for expansion of the building in the premises belonging to the employer also comes under the definition of 'employee' as provided under Section 2(9) of ESI Act, 1948 and hence employer is liable to pay contributions to such employees.

21. In the case of **Regional Director, Employees' State Corporation, Madras -vs- South India Flour Mills (P) Ltd.,**⁴ it is held that;

"Any work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. The work of construction of additional buildings required for expansion of a factory must be held to be ancillary, incidental or having some relevance to or link with the object of the factory. It is because of these additional buildings that the existing factories will be expanded and, consequently, there will be increase in the production, that is, increase in the work of the factories concerned. So the work of construction of these additional buildings has a link with the work of

⁴ (1986) 3 SCC 238



the factories. It is not correct to say that such work must always have some direct connection with the manufacturing process that is carried on in the factory. The expression "work of the factory" should also be understood in the sense of any work necessary for the expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment.

Thus, the workers employed for the construction of the additional buildings for the expansion of the factories are employees within the meaning of Section 2(9) of the Act."

22. In the case of ***Employees' State Insurance Corporation, Bangalore -vs- Ambika Appliances (Private) Ltd., Hubli,***⁵ the learned Single Judge of this Court, interpreting Section 2(k) of the ESI Act, held that;

"A plain reading of the definition of "manufacturing process" in Section 2(k) of Factories Act, 1948 would make it clear that the definition of manufacturing process does not depend upon and is not in any way co-related with any end product being manufactured out of the manufacturing process. This inference has to be drawn in the light

⁵ 2007 (3) L.L.N. 3006



of the definition mentioning that "manufacturing process" also includes various kinds of activities like repairing, making ornaments, packing, cleaning or otherwise treating or adapting any article or substance with a view to use, sale, transport, delivery or disposal. Therefore, the definition of "manufacturing process" does not permit one to take the view that the activity concerned must lead to manufacture of something or production of a different article. The word "manufacturing process" cannot be interpreted in a narrow sense, particularly in respect of an Act which is meant for the purposes connected with special welfare."

23. In the case of ***Kirloskar Brothers Ltd., -vs- Employees' State Insurance Corporation,***⁶ the appellant Company had two factories, one in State of Maharashtra and one in Madhya Pradesh. Only one of these factories, viz., that was situated in Madhya Pradesh was covered under the Act. The appellant-company had its recognised Head Office at Pune for sale and distribution of its products from the three factories. It had also Regional offices at several places. The Government of Andhra Pradesh and

⁶ (1996) 2 SCC 682



Karnataka applied the provisions of the Act to the appellant-company's Regional Offices situated at Secunderabad and Bengaluru. Accordingly, the said Regional Offices were required to contribute their share of the health insurance of the workmen. The appellant-company contended that the products of the factory covered under the Act constitute only 3% to 33% and not a predominant part of the business transacted by the said Regional Offices and that therefore, the appellant-company was not liable to pay contribution. Rejecting the contention of the appellant, the Hon'ble Apex Court held that,

"In view of the provisions of Sections 2(9), 2(15) and 2(17) of the Employees State Insurance Act, 1948, the person who keeps control or is responsible for the supervision of the establishment at the respective regional offices in connection with the factory whose finished products are distributed or sold, would be the principal employer for the purpose of the Act. The person appointed for sale or distribution of the products in the Regional Office is the employees covered under the Act."



Further, at paragraph-6 of its judgment, the Hon'ble Apex Court held as under:

"The object of the Act is to provide certain benefit to the employees in the case of sickness, maternity, employment injury and for certain matters in relation to thereto. Seeking Section 39 of the Act enjoins upon the employer to make payment of contribution and deduction of the contribution of the employees from their wages at the rates specified in the I Schedule to the Act and to credit the same to their account. The employees covered under the Act in return would receive treatment for sickness, maternity, payment for employment injury, etc., Every human being has the right to live and to feed himself and his dependents. Security of one's own life and livelihood is a pre-condition for orderliness, liberty, equity and dignity of the persons are intertwined precious right to every citizen."

24. Thus, it is clear that the ESI Act, 1948, is a beneficial legislation and shall be interpreted liberally in favour of the labourers. The definition of 'Employee' includes permanent employee, daily wagers or temporary employees who are engaged in the factory premises for



main, as well as incidental purposes. Any work related to manufacturing process either main or incidental shall be held to be manufacturing process. It is not necessary that the incidental work shall be done in the same premises. Even if a daily wage employee works in another premises belonging to the same employer towards manufacturing process or expansion of the business of employees, it shall be considered as work done in the course of business as held in the case ***Kirloskar Brothers Ltd.,(cited supra)***.

25. The employer in this case has not produced relevant and reliable documents before the officers of ESI Corporation during personal hearing of the matter, as well as ESI Court. It is not in dispute that the company has been running its business of manufacturing and sale of gold jewellery since 1995 and the said business was expanded by taking over another land allotted to it by the KIADB and thereafter, started construction of the building during 1997 and completed by the year 2001, by spending around Rs.28 crores, in the land allotted at Whitefield.



The company has not disputed to pay the contribution towards engaging construction workers from the year 2001 on the ground that the company did not involve in manufacturing process in the said premises till the year 2001.

26. Considering all these materials and facts and circumstances of the present case, we are of the opinion that reasons assigned by the ESI Corporation calling upon the company to contribute towards construction workers were proper. The findings of the ESI Court is not tenable. The company for expansion of its business, obtained another premises in Bengaluru and constructed the building. The said process is incidental for expansion of its business. The ESI Court erred in not allowing the ESI Corporation to recover the contribution towards labourers engaged in construction of the building. Therefore, the company is liable to pay Rs.5,37,220.73 ps. as a contribution payable on the building construction for the period from 01.08.2000 to 31.03.2003.



27. The ESI Corporation has sought for contribution from the company towards furniture and fixtures for an amount Rs.42,96,783/- for the year 2001-2003. The Corporation has also sought for contribution towards labour charges for installation of plant and machinery worth Rs.20,32,72,736/- for the year 2000-2003.

28. The company contends that it had placed orders for supply of furniture with M/s.Alankar Furniture. The said firm prepared furniture as per the order and deputed its employees for installation of the furniture in the premises of the company. The said employees worked under the control and supervision of M/s. Alankar Furniture. The said firm collected the price of the furniture along with service charges. The documents are placed on record in this regard.

29. It also contends that it had placed orders for plant and machineries with its dealer. As per the specification, the plant and machineries were secured by the dealer and installed in the premises of the company by



deputing its employees who were experts in the said field and the said dealer had collected price of the plant and machinery, as well as service charges. The said persons who came to install the furniture, fixtures, plant and machineries, had not worked under the direction and supervision of the company. Therefore, they are not the employees of the company.

30. The company contends that normally dealers of furniture business and plant and machineries collect the specification from its customers, prepare the furniture in its own premises and thereafter send to the customers. Similar is the case of dealers in plant and machinery and those employees cannot be considered as employees of the company/customer.

31. The contention of the company as stated above is tenable. There are no materials on record to show that company had hired carpenters and supplied the raw materials to them and such carpenters had prepared furniture and fixtures in the premises of the company by



collecting wages from the company. It is not in dispute that the company had purchased plant and machineries worth about Rs.20 crores and it is nobody's case that the said plant and machineries were prepared in the premises of the company. The installation of such machineries require expert hands, which are said to be supplied by the dealers. Such expert labourers work as per the directions of their immediate employer or the company which manufactured such machineries. Therefore, the observations made by the officer of the ESI Corporation in the order produced at Ex.R-10 that the persons who came to install the plant and machineries, as well as furniture and fixtures are employees of the company, is not tenable without any sufficient materials. The learned Presiding Officer of the ESI Court reconsidered the same and rejected the claim of ESI Corporation and it does not call for interference.

32. The ESI Corporation had not called upon the company to pay contributions towards vehicle charges.



Looking to the amount of expenses, it does not appear that it is for the repair of the vehicles. Moreover, for repair purpose, normally vehicles were sent to authorised service centres and there are no materials on record to show that appellant-company had its own garage in the premises to repair the vehicles. Since the ESI Corporation did not sought for any contribution in this regard, there is no need of considering the same.

33. The ESI Corporation demanded the contributions towards labourers involved in preparation of jewelleries. The contention of the company is that it used to import gold from Australia and other countries and outsourced the preparation of jewelleries to the firms/proprietary concern, which were taking such jobs. The said concerns through its own employees, prepares the jewelleries as per the specification of the company and deliver it to the company by collecting the charges for preparation of the jewelleries. The persons who prepare the jewelleries even not entered the premises of the company and hence they cannot be considered as employees of the company. The company



produced Ex.A-4 before the ESI Court i.e., issue and receipt books pertaining to handing over of the gold to the concerns for preparation of the jewelleryes. In the cross-examination of AW-1, nothing is brought out regarding Ex.A-4. There are no materials on record to show that labourers/ workmen were preparing the gold ornaments in the premises of the company. Under such circumstances, they cannot be considered as employees of the company.

34. Learned counsel appearing for the company has relied on the judgment of Hon'ble Apex Court in the case of ***Managing Director, Hassan Cooperative Milk Producer's Society Union Limited's case (supra)***, wherein it is held that,

"Assumption shall be in favour of ESI Corporation that workers engaged by the contractor (immediate employer) for transportation of milk have been employed in connection with the work of the principal employer and these employees, thus, qualify under the first substantive part of Section 2(9). But merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an "employee", he must not



only be employed in connection with the work of the establishment but also be shown to be employed in one or the other of the three categories mentioned in Section 2(9)."

In the above said judgment, it is further held that,

"Exercise of supervision and issue of some direction by the principal employer over the activities of the contractor and his employees is inevitable in contracts of this nature and that by itself is not sufficient to make the principal employer liable. That the contractor is not an agent of the principal employer under Section 2(9)(ii) admits of no ambiguity. This aspect has been succinctly explained in C.E.S.C. Ltd. with which we respectfully agree.

No evidence has been collected by the E.S.I. Corporation during the inspection of the appellants' establishments or from the contractors that the appellants have any say over the terms and conditions of employment of these employees or that the appellants have anything to do with logistic operations of the contractors. As a matter of fact, there is nothing on record to show that principal employer had any knowledge about the number of persons engaged by the contractors or the names or the other details of such persons. There is also



no evidence that the appellants were aware of the amount payable to each of these workers. In the circumstances, even if it be held that the transportation of milk is incidental to the purpose of factory or establishment, for want of any supervision of the appellants on the work of such employees, in our opinion, these employees are not covered by the definition of 'employee' under Section 2(9) of the Act."

The principle of law laid down in the aforesaid judgment would assist the contention of the company. Therefore, employees of M/s. Alankar Furniture, the employees of dealer of plant and machinery, so also, the employees who prepared the jewelleries are not the employees of the company and the company was not liable to pay the contribution towards the said employees. Hence, the learned trial Judge rightly rejected the demand of the ESI Corporation to pay the contribution towards the said heads.

35. We do not find any reason to interfere in the said findings. Of course, learned Presiding Officer of the ESI Court did not discuss these points elaborately, however,



arrived at a right conclusion and rejected the claim of the ESI Corporation regarding contribution to be made by the said company towards the above said heads.

36. For the aforesaid reasons, we answer substantial question of law framed in MFA.No.2157/2016 filed by the ESI Corporation partly in the affirmative. The company is liable to pay contribution towards construction of the building, but not liable to pay contribution towards furniture and fixtures, plant and machineries and making charges.

37. For the above said discussion, we proceed to pass the following:

ORDER

MFA.No.2751/2016 filed by the appellant-
Company is ***dismissed.***

MFA.No.2157/2016 filed by the Recovery
Officer, Employees' State Insurance Corporation,
is ***partly allowed.***

The order passed by the Employees' State
Insurance Court, at Bengaluru, in E.S.I.



Application No.25/2010, dated 25.01.2016, is modified.

The appellant-Company is liable to pay contribution of Rs.18,92,230/- towards 'Salary and Wages' and Rs.5,37,220.73 ps. towards contribution payable on building construction.

The claim of ESI Corporation for the contribution towards furniture and fixtures, plant and machineries and making charges, are rejected.

The Registry is directed to send back the trial Court records along with copy of the judgment to the concerned Court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE