

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.58 of 1980

Date of Decision: 19.10.2016

Employees' State Insurance Corporation & another

... Appellants

Vs.

Enkay (India) Rubber Company Pvt. Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vikas Suri, Senior Standing Counsel,
for the appellants.

Mr. Harsh Aggarwal, Advocate,
for the respondent-company.

Amol Rattan Singh, J.

This is the first appeal filed under Section 82 of the Employees State Insurance Act, 1948 (hereinafter to be referred to as the Act), by the Employees' State Insurance Corporation (hereinafter to be referred to as the Corporation), against the judgment of the Judge, Employees Insurance Court, Gurgaon, dated 28.12.1978.

Vide the impugned judgment, the petition filed by the respondent herein, i.e. Enkay (India) Rubber Company Pvt. Limited (hereinafter to be referred to as the company), was allowed and the Corporation was restrained from realising the demand raised by it against the company, with regard to special contribution to be made under Section 73-A of the Act, (contained in the repealed Chapter V-A thereof), for the period from 28.01.1968 to

30.06.1973.

2. The facts giving rise to the filing of the petition by the respondent company, are that the company admittedly being a factory within the meaning of Section 2 (12) of the Act, had contended that it was making regular compliance of the provisions of the Act and had been submitting its returns regularly, but as per the Corporation, the employees working in the head office of the company, at Delhi, were also employees within the meaning of Section 2 (9) of the Act and as such, the company was liable to make a statutory contribution under the Act, in respect of those employees also, and consequently, a demand was raised by the Corporation vide a notice issued on 16.06.1975, with regard to the special contribution to be made by the employer, as also the employees' contribution, for the aforesaid period from 1968 to 1973.

3. The company therefore challenged the aforesaid demand notice, before the Employees Insurance Court constituted under Section 74 of the Act, contending that the aforesaid demand was wholly illegal and deserves to be quashed, on the following grounds:-

- i) The fact that the demand notice was issued without complying with the principles of natural justice;
- ii) That the demand was created “on an *ad hoc* basis”, i.e. without specifying the basis of the demand;
- iii) That the designation of the Authority raising the demand had not been given in the demand notice;
- iv) That it was time barred;
- v) That Chapter V-A of the Act had been repealed w.e.f. 01.07.1973 and as such, no contribution under the provisions of that chapter could be demanded even for a period prior to the repeal,
- vi) That the demand in respect of employees posted at the head

office at Delhi is without jurisdiction as no notification under Section 1(3) of the Act had been issued by the appropriate Government and hence, the Act itself was not applicable in respect of employees posted at places other than Gurgaon, though the company had now started deducting the contribution from the head office employees also, under protest and without prejudice to its rights; and

- vii) That the inspection report on the basis of which the demand had been created, also did not carry any presumption of truth, as the Inspector who had made the report, had not pointed out any irregularity at the time of the inspection.

4. Notice having been issued in the petition to the present appellant-Corporation (respondent in the petitioner before the Insurance Court), it filed a written statement simply denying all the averments and stating that the demand had been correctly raised, but subsequently having filed an application, was allowed to take a plea on limitation.

Consequently, a preliminary objection was added to the written statement already filed, to the effect that the petition itself was barred, it not having been filed within three years from the date that the cause of action arose. (The contention being that since the demand was for the period from 28.01.1968 to 30.06.1973, and the petition having been filed on 18.07.1977, it was filed beyond a period of three years even from the last date with regard to the demand, i.e. 30.06.1973).

5. Upon the aforesaid pleadings, the following issues were framed by the learned Judge of the Employees' Insurance Court:-

- “1. Whether the impugned demand was illegal, void and misconceived of any on the grounds pleaded in para 5 of the petition? OPP
- 2. Whether the petition is barred by time? OPP
- 3. Relief.”

6. First dealing with the issue of limitation, it was held by the Insurance Court that a demand even for the period from 1968 to 1973, having been created for the first time vide the notice dated 16.06.1975, and the petition having been filed on 18.07.1977, it was filed within three years of the notice, and as such, it was not barred by time. The contention of the Corporation that since the demand was for the period from 28.01.1963 to 30.06.1973, limitation would start running from then, was rejected.

7. The issue of whether the demand itself had been raised within time or not, by the Corporation, vide the notice dated 16.06.1975, that issue was also decided against the Corporation, holding that even though Section 77 of the Act applies to a person who petitions the Insurance Court and not to the Corporation itself, in respect of raising a demand for unpaid contribution, that would not mean that the demand could be raised at any time by the Corporation and as such, the demand vide the notice dated 16.06.1975, having been raised in respect of the period 28.01.1968 to 30.06.1973, was barred by limitation.

8. An issue having been raised in arguments that the demand had been raised in respect of sales staff (of the head office at Delhi), it was found that no such plea had been taken by the parties in the written pleadings, and as such, “no amount of evidence can be looked into in respect of the fact, which is not pleaded by a party”.

However, even so, it was further held that since no notification under Section 1(5) of the Act had been issued to cover sales staff within the definition of “employee”, therefore, no demand could be raised in respect of such staff.

9. With regard to the argument that the Corporation could not create

a demand through any officer, that issue was held in favour of the Corporation by the Insurance Court, holding that nothing contained in Section 75-B of the Act stipulated that a demand can be created by the Corporation only and not by any of its officers. Hence, as regards the jurisdiction of the Regional Director, who had raised the demand vide the notice dated 16.06.1975, such jurisdiction was upheld.

(It needs to be noticed that the Court seems to have erroneously referred to Section 75-B, as the mode of recovery of the employers' special contribution, was provided in Section 73-D of Chapter V-A, since repealed w.e.f. 01.07.1973).

10. Eventually, having held the demand notice to have been issued beyond the period of limitation and further, that sales staff was not covered under the definition of employee, the petition filed by the company was allowed and the appellant Corporation restrained from realising the amount raised in the demand notice impugned before the Court.

Hence, this appeal by the Corporation (respondent before the Employees' Insurance Court).

11. Before this Court, Mr. Vikas Suri, learned Senior Standing Counsel for the appellant-Corporation, submitted that, firstly, as regards even the issue of limitation, in raising the demand, the judgment of the Insurance Court is contrary to the law laid down by the Supreme Court in **ESI Corporation v. C.C.Santhakumar** (2007) 1 SCC 584, wherein it was held that the Act being beneficial legislation, the provisions therein, in favour of the employees, need to be liberally construed.

In fact, learned counsel submitted, that as per the said judgment, the entire basis of the petition filed by the Company gets eroded, and as such,

the demand created has to be upheld. Learned counsel also referred to specific parts of the judgment of the hon'ble Supreme Court (supra), to submit that even as regards the issue of contribution to be made in respect of employees working in a branch office, or any other office located in a State where the appropriate government had not issued any notification making the Act applicable to that State, the Corporation would be within its jurisdiction to raise a demand and realise it, (even qua such employees), if the demand is created by the Corporation, in a State where the Act applies.

Thus, Mr. Suri submitted that the demand having been raised in Gurgaon, Haryana, where admittedly the Act applied even for the period from 1968 to 1973, and the company having its head office in Delhi, with employees working for the benefit of the same company, a demand could be raised by the Corporation, for special contribution by the employer as also by the employees, in Gurgaon itself, even with respect to employees working in the head office at Delhi.

12. In response, Mr. Harsh Aggarwal, appearing for the respondent company, first submitted that once the transitory provisions contained in Chapter V-A, including Section 73-A, had been repealed w.e.f. 01.07.1973, the demand itself, with regard to the contributions to be made under the said provision, could not have been raised.

In this regard, learned counsel referred to a judgment of a co-ordinate Bench of this Court in Employees' State Insurance Corporation, Chandigarh v. M/s Dalmia Dadri Cement Ltd. and another (AIR 1972 P&H 414).

He of course further submitted, that with regard to the employees of the head office at Delhi, the Regional Officer/Director in Haryana could not

have issued any demand notice and even, in fact, the Zonal Officer could not have done so.

Learned counsel therefore submitted that the appeal should be dismissed.

13. Before considering the arguments raised before this Court, it must be stated here that though this appeal is pending since the year 1980 (probably the only FAO that is so old), a query had been put to learned counsel as to whether there is any contest left in the matter, the amount involved being, as per today's economic parameters, not so high for a company to pay, i.e. Rs.9325/- only. Both learned counsel however, were *ad-idem* that the matter needed to be contested, not just for the amount involved but because of the principle behind it, to the extent as to whether, in principle, what the judgment of the learned Employees' Insurance Court holds, is based on wholly erroneous parameters or not.

Consequently, since this is an appeal filed under Section 82 of the Act, the questions of law which are to be determined by this Court, are:-

- i) Whether, in the absence of any period of limitation provided in the Act for raising a demand in respect of unpaid special contribution by the employer, was the demand raised by the appellant Corporation, vide the notice dated 16.06.1975, barred by time?
- ii) Whether after the repeal of Chapter V-A of the Act w.e.f.01.07.1973, a demand under Section 73-A could have been raised by the appellant, for the period that the aforesaid chapter and section were in operation?
- iii) Whether, with the Act not having been enforced by way of a notification of the appropriate Government in Delhi under Section 1(5) of the Act, could a demand have been raised by the appellant, vide a notice issued from its authority in

Gurgaon, in respect of employees of the respondent, as were not working in Gurgaon, but were working in the head office in Delhi?

- iv) Would sales staff be covered under the definition of “employee”, as defined in Section 2 (9) of the Act?

14. Having considered the arguments of learned counsel, as also the impugned judgment of the Insurance Court, I find myself in agreement with learned counsel for the appellant Corporation, that as regards the issue of limitation, held against the Corporation by that Court, the matter now stands settled by the Supreme Court in *Santhakumars'* case (supra), wherein, after discussing the law on the subject, it was held, in effect, that the Act being a beneficial legislation, a construction should be given to its provisions so as to ensure that the legislative intent behind the enactment is fulfilled.

On the issue of whether any limitation could be read into the provisions of the Act to debar the Corporation from raising a demand, it was held that no such limitation having been provided, the legislative intent was obviously that the contribution towards the employees' fund, being for the benefit of the employee, would be a continuing benefit to him till he remained in employment. (Thus, in that respect, non-contribution would be a continuing cause of action affecting him till his severance benefits were not paid).

15. However, it was also held that in all such cases where limitation is not provided, generally a reasonable period of time is taken into consideration, by which a demand can be raised, but what constitutes a reasonable period, would depend upon the circumstances of the case. In fact, even in the aforesaid case (*Santhakumar*), eventually the matter was remitted to the ESI Court to determine the quantum of contribution payable by the employer (respondent in that case) and to thereafter determine as to whether the demands were raised

within a reasonable period of time or not, after considering the question of prejudice, if any, for the delayed action taken by the Corporation.

(Reference paragraph 38(3) of the aforesaid judgment, SCC citation).

16. On the aforesaid parameter, as regards limitation, it needs to be said that though normally three years is considered a reasonable period within which a demand can be raised by an Authority, if not raised earlier, however, that period of three years, extendable to five years in certain circumstances, is normally applicable to a case where either a tax, a fee or a cess is to be imposed or realised.

Mr. Vikas Suri, learned counsel for the appellant Corporation, has also referred to a judgment in **Goodyear India Ltd. v. Regional Director, Employees' State Insurance Corporation and others** (1997) 3 SCC 189, wherein a demand made on 01.12.1982, for contribution for the period from January 1968 to August 1979, was upheld by the Supreme Court, i.e. as regards the period of January 1968, a demand raised even almost 15 years later, was upheld, though on different reasoning.

Even so, in the opinion of this Court, a demand raised in 1975, for contribution by the employer, for the period from 1968 to 1973, cannot be considered to be wholly beyond a reasonable period, even though the period from January 1968 to June 1970 would go beyond a period of five years on the date that the demand notice was issued, i.e. 16.06.1975.

Hence, considering that the demand raised was in respect of contribution to the employees' fund, for their welfare, to be paid to the employees at the time of retirement etc., in my opinion, it was a continuing cause of action and hence, such a demand cannot be held to have been made beyond a reasonable period.

Consequently, the finding of the Employees' Insurance Court, in that regard, is reversed and the first question of law decided in favour of the appellant Corporation.

17. Next, coming to the issue raised by Mr. Aggarwal, of whether a demand raised under Section 73-A, contained in Chapter V-A of the Act, can be sustained or not, after the said chapter itself was repealed w.e.f. 01.07.1973.

It needs to be noticed that the aforesaid chapter was introduced in the Act in 1951, as a transitory provision, requiring an employer to make special contribution towards the employees' fund, for the period that the chapter remained in operation, as stipulated in Section 73-1 thereof; i.e. it was to continue to remain in operation till such time as the Central Government issued a notification to that effect.

Undoubtedly, the demand raised by the appellant Corporation, from the respondent company, is in respect of special contribution under the repealed Chapter V-A.

Learned counsel for the respondent company relied upon a judgment of a co-ordinate Bench of this Court in *Dalmia Dadris'* case (supra), wherein it was held that since Section 43 of the Employees' State Insurance (Amendment) Act, no.44 of 1966, did not save the right of the Corporation to claim "the actuarial present value of the periodical payment", due to the dependents of an employee of *M/s Dalmia Dadri Cement Ltd.* (one Rulia Ram), during the period when the amendment (in that case) remained in force, uptill 28.01.1968, subsequently, no demand could have been raised. This Court also referred to Section 6 of the General Clause Act, 1897, to hold so.

18. Having considered the above, other than the fact that the circumstances of that case and the present one are not identical, even the

principle contained in the aforesaid judgment, in the present context, cannot hold, in view of the subsequent judgment of the Supreme Court in **M/s Nagammai Cotton Mills v. Regional Director, Employees' State Insurance Corporation and another** (1994 Supp. (2) SCC 142).

In the aforesaid case, specifically the issue of whether recovery of arrears could be made, of special contribution payable when Chapter V-A was in force, was considered by their Lordships.

It was held that in terms of Section 6 of the General Clauses Act, even when an Act is repealed, unless there is an apparent different intention, the repeal would not affect any right, privilege, obligation or law, acquired, accrued or incurred, under any enactment so repealed. It was further held that no provision could be shown in the context of Chapter V-A of the Act, from which it could be gathered that a different intention to what is contained in Section 6 of the General Clauses Act, was intended by the legislature.

(In fact, even in this case, it was further held that there was no period of limitation prescribed for recovery of such dues from an employer, by the Corporation).

19. Hence, as regards the issue of the demand being barred after the repeal of Chapter V-A, the contention of learned counsel for the respondent company is rejected, in view of the authoritative pronouncement in that regard by the Supreme Court and the 2nd question also decided in favour of the appellant.

20. Coming then to the important issue of whether a demand notice could be issued by the Corporation in Gurgaon, (where the company was carrying out its manufacturing process), in respect of employees working in the head office at Delhi, where it is contended (and not opposed as to that

factual position by the appellant Corporation), that the relevant provisions of the Act had not been notified by the appropriate Government.

In this regard, a judgment cited by Mr. Suri, learned counsel for the appellant, in Transport Corporation of India v. Employees' State Insurance Corporation and another (2001) 1 SCC 332, needs to be referred to and relied upon. In that case, the situation was that the demand notice had been issued in Andhra Pradesh, where the head office of the employer was located, in respect of contribution towards the fund of the employees working in the branch office at Mumbai. It was held by their Lordships, after discussing the entire law on the subject, that as regards notice being issued at the place where the head office is located, a demand could be raised in respect of employees working in any branch in the country, even if the State in which such branch office was located, had not issued any notification making the relevant provisions of the Act applicable to that particular State. It was held that the branch offices in any case worked towards the common goal of the company itself, which was administered from the head office and therefore, the key aspect being the welfare of the employees of the company, the intention of the legislature, in enacting the Act, would obviously be that the Corporation, which otherwise would have a pan-India operation, could realise the contribution of an employer towards the fund of its employees, even if such employees were not working in a State in which the relevant notification had been issued.

21. No doubt, in the present case, the situation is actually the reverse, with the notice having been issued by the Authority of the Corporation, stationed at Gurgaon, where the manufacturing unit of the company is located, in respect of employees of the head office, which was situated in Delhi.

However, in the opinion of this Court, even that reversal of situation would not dilute the ratio of the judgment in *Transport Corporation of Indias'* case (supra), wherein it was first observed as follows, by citing a judgment of a Division Bench of the Andhra Pradesh High Court:-

“20. Now it is time for us to deal with the judgments to which our attention was invited by learned counsel for the respective parties. Before we consider the decisions of this Court, it is appropriate to refer to a decision of the Division Bench of the Andhra Pradesh High Court in the case of *ESIC, Hyderabad v. Southern Eastern Roadways*³. The question before the Division Bench of the High Court in that case was as to whether the notification applying the Act to a branch of a transport company situated at Visakhapatnam in Andhra Pradesh whose head office was at Calcutta could make available to the employees of the branch benefits of the Act even though the head office was not covered by the Act. It becomes at once clear that this was a converse case wherein the head office was not governed by the Act as the West Bengal Government had not issued any notification for governing the parent establishment at Calcutta but it was the branch which was governed by the Act because it was situated in Andhra Pradesh State which had issued the notification in question. It was held by the Division Bench, speaking through Rama Rao, J., that even if the head office was not governed by the Act, so far as the branch was concerned, because the Act was applicable to the employees working therein the benefit of the Act could not be denied to the employees of the branch within the limits of Andhra Pradesh State. Dealing with the statutory provisions of the Act and the beneficial provisions thereof, the following pertinent observations were made in para 8 of the Report. The same read as follows:

“The Employees’ State Insurance Act is aimed at conferring benefits on employees in case of sickness, maternity and employment injury. Section 38 of the Act mandates that all the employees in the factories or establishments shall be

insured. The initial and vital endeavour should be to identify the beneficiaries or the employees for insurance. It is well settled that the employees in head office as well as the branches are comprehended within the ambit of the coverage of the Act. The branch office is only an appendage to the head office and the branches are located in the place or State where the head office is situated or other places outside the States also to measure up to the expansion or diversification of the business or undertaking. Each branch is an offshoot of the head office and cannot be considered to have an independent entity as all the transactions ultimately funnel into head office and the entirety of transactions of the head office and branches as well are reflected by the head office as one unit. The infrastructure for the maintenance and running all the branches flows from the same capital source and the streams of business by all the units will be ultimately pooled. It is not in dispute that the branches carry on the identical business and transactions. Each branch is a component of the main office and all the branches are miniatures of the main office and as such cannot be considered as separate and independent entities.”

21. In our view, the aforesaid observations on the scheme of the Act for covering the activities of head office and branches of the establishment are well sustained. In the light of the statutory scheme envisaged thereunder, there is no escape from the conclusion that each branch, having functional integrality and being under the direct supervision and control of the parent office, would be part and parcel of the main establishment and all such branches have to be treated as miniatures of the main office. They cannot be considered as separate independent entities on the factual data in the present case on which there is no dispute between the parties. As discussed by us earlier, there is no escape from the conclusion that the Bombay branch is an appendage and part and parcel of the main establishment at Secunderabad and is

almost a shortened mirror image thereof.”

(All emphasis applied by this Court)

22. Undoubtedly, in the *South Eastern Roadways'* case (supra), before the Andhra Pradesh High Court, the situation was that the head office was located in a State where the Act did not apply, but the branch office was located in a State where the Act did apply, and it was held that, as regards the branch itself, the Act would become applicable because it was located within the limits of a State where the Act applied.

Of course, the natural argument that would be raised in this context, by the respondent herein, would be that the ratio of that judgment would only cover employees who were working in the unit/office located in a State where the Act applies, and in respect of such employees, in the present case, in any case there is no dispute, i.e. the company had made its contribution even under Chapter V-A, as regards its employees in Gurgaon. Hence, the contention of learned counsel for the respondent company could be that the ratio of the judgment would not apply to the head office employees located at Delhi, where the Act was not in force, and as such, the demand notice in question was without jurisdiction.

23. However, in the opinion of this Court, what is to be seen is the fact that the company is a cohesive whole, working towards the same goal, with all its employees also involved in that process, whether they are working in one place, or another. Hence, the observations of the Supreme Court in **Kirloskar Bros. Ltd. v. ESI Corporation** (1996) 2 SCC 682, would also need to be referred to:-

“11. The principal test to connect the workmen and employer under the Act to ensure health of the employee being covered

under the Act has been held by this Court in *Hyderabad Asbestos case*⁵, i.e., the employee is engaged in connection with the work of the factory. The tests of predominant business activity or too remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected with the entire business or trading activities. The true test is control by the principal employer over the employee. That test alone will be the relevant test. The connection between the factory and its predominant products sold or purchased in the establishment or regional offices are irrelevant and always leads to denial of welfare benefits to the employees under the Act. When there is connection between the factory and the finished products which are sold or distributed in the regional offices or establishment and principal employer has control over employee, the Act becomes applicable. The test laid down by the Orissa High Court, namely, predominant business activity, i.e., sale or distribution of the goods manufactured in the factory at Deewas, is not a correct test. It is true that this Court in the special leave petition arising from the Orissa High Court judgment, declined to grant leave holding it to be one of peculiar facts.”

(SCC citation)

24. Thus, in the present case, there being no denial at all, that the head office located at Delhi, was obviously interconnected with the manufacturing unit in Gurgaon, and vice-versa, there would be no reason to oust the jurisdiction of the Corporation from raising a demand for special contribution towards the welfare of the employees, in terms of the Act, even if the demand was in respect of employees working in head office at Delhi, where the Act had not become applicable at the relevant time, though it was very much applicable to the employees of the manufacturing unit located in Haryana.

In this regard, the observations of the Apex Court in **Southern Agencies v. A. P. Employees' State Insurance Corporation** (2001) 1 SCC 411, can also be referred to, as follows:-

“4. In *Kirloskar Consultants Ltd. v. ESI Corpn.*¹ after referring to the decisions in *International Ore and Fertilizers (India) (P) Ltd. v. ESI Corpn.*², *Hindu Jea Band v. Regional Director, ESIC*³ and *ESI Corpn. v. R.K. Swamy*⁴ we have examined the scope of the expression “shop” used in the notification issued under the Act and held that the word “shop” has acquired an expanded meaning. Where in a premises any economic activity is carried on leading to sale or purchase, that premises will have to be held a “shop” for the purpose of the Act even though there is no actual giving or taking of goods in such premises. If the business carried on in a premises results in having some nexus with the purchase or sale of goods it is sufficient to be a “shop” for the purpose of the Act.”

25. Therefore, in the opinion of this Court, the impugned demand notice issued by the appellant Corporation, to the respondent company, even in respect of its employees working at the head office at Delhi, when the head office and the manufacturing unit at Gurgaon were wholly and intricately connected as integral parts of the company, was not without jurisdiction.

Thus, the 3rd question is also answered in favour of the appellant.

26. Though no argument was raised in that regard, it would still be necessary to deal with what was held by the Insurance Court on the employees at Delhi not being covered in the definition of employees, they being sales staff.

In that respect, on first principle alone, the learned Judge of that Court wholly erred, in the opinion of this Court, in holding so in the face of the definition of an employee, as is stipulated in Section 2 (9) of the Act, which,

before the amendments of 1989 and 1991, read as under:-

“(9) “employee” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and--

- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or
- (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof with the purchase of raw materials for, or the distribution or sale of the produces of, the factory or establishment [or a person engaged as an apprentice, nor being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include]-

- (a) any member of [the Indian] naval, military or air forces; or
- [(b) any person so employed whose wages (excluding remuneration for overtime work) exceed [one thousand and six hundred rupees a month] a month];

Provided that an employee whose wages (excluding remuneration for overtime work) exceed [one thousand and six hundred rupees a month]

at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]”

Thus, as per Section 2 (9), even a person employed in any work connected with the sale of the products of the factory or establishment, is covered under the definition of an employee, if his wages are not above a sum of Rs.1600/- per month. Nothing has been pointed out in the present case, to show that the sales executives stated to be working from the head office in Delhi, were drawing wages beyond Rs.1600/- per month.

Hence, the finding of the learned Employees' Insurance Court, on that aspect also, is set aside and the last question of law is also decided in favour of the appellant.

27. Coming then to the remaining two grounds raised by the company, in its petition before the learned Insurance Court, with regard to non-compliance of the principles of natural justice and with regard to the Inspector who had made the report, not having pointed out any irregularity at the time of the inspection.

It needs to be pointed out that firstly, those issues, though raised in the petition filed by the company (respondent herein), are not seen to have been dealt with or even actually argued before the Court below and nothing with regard to either of these two aspects, has been pointed out even before this Court, from any evidence led before the Insurance Court, in that regard. Though, undoubtedly, the records of this case were burnt in the fire incident that took place in the record room of this Court in January 2011, however, the entire file having been reconstructed by learned counsel thereafter, the evidence led before the Court below has not been so reconstructed and nothing has been pointed out, as already said, from any record even produced now, in

Court, in this appeal.

Hence, obviously, the aforesaid two grounds were taken in the petition, simply as “usual formal grounds”, with no firm basis thereto.

Consequently, with no evidence having been led in that regard, these two grounds, though not dealt with specifically by the Court below, are also rejected, even with no argument in that regard having been raised before this Court, by either side.

28. Thus, in view of the entire discussion above, I find no error in the demand raised by the appellant Corporation from the respondent company, in respect of the special contribution to have been made by the company under Section 73-A of the Act, for the period in question, that period definitely being a period when Chapter V-A was in operation.

Therefore, this appeal is allowed with costs, which are quantified at Rs.5000/-, and the impugned judgment and decree of the learned Employees' Insurance Court, dated 28.12.1978, is set aside and the petition filed by the respondent herein before that Court, is dismissed.

A decree-sheet be prepared accordingly.

October 19, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking ? Yes

Whether reportable ? Yes