



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.738 of 2015

and

MP(MD)No.1 of 2015

M/s.Anna Cooperative Spinning Mills Ltd,
Andipatti - 625 512,
Theni District,
Rep.by its Administrator.

... Appellant

Vs.

Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai - 625 020.
Rep.by its Assistant Director.

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 82 of Employees State Insurance Act, 1948 against the order dated 26.03.2015 made in ESIOP.No.115/2008 on the file of Employees State Insurance Court (Labour Court), Madurai.

For Appellant : Mr.M.Elanchezhian

For Respondents : Mr.K.C.Ramalingam

JUDGMENT

Heard the learned counsel for the parties.

2.The appellant is a cooperative spinning mill. It is covered by the provisions of the Employees State Insurance Act, 1948. Coverage is not under challenge. The issue is regarding the quantum of contribution payable for the period from July 1996 to March 2006. The respondent passed an order under Section 45 A of the ESI Act. The same was questioned by filing ESIOP.No.115/2008 before the Employees State Insurance Court (Labour Court), Madurai. The same was partly allowed in respect of claim of



contribution on conversion charges and the petition was dismissed in respect of other claims. Contending that the ESIOP ought to have been allowed in respect of claim of contribution with regard to the payment of stipend to the apprentices engaged under certified standing orders of the appellant and payment of tiffin allowance to the employees, this appeal has been filed.

3.This Court admitted the appeal on the following questions of law :

A.Whether the appellant is liable to pay contribution for the stipend paid to apprentices engaged as per its certified standing order for the period from 1996 to 2006 when the apprentice are exempted as per Section 2(9) of the ESI Act at the relevant point of time?

B.Whether the appellant is liable to pay contribution for the tiffin expenses for the period from 1996 to 2006 when the said expenses is not wages as per Section 2(22) of the ESI Act?

C.Whether the findings of the court below are contrary to the admissions made by the respondent in his counter statement as well as his witness?

4.It is seen that the definition of "Employee" is set out in Section 2(9) of the ESI Act, 1948. An amendment was made with effect from 01.06.2010, whereby any person engaged as apprentice whose training period is extended to any length of time was also brought within the scope of the term "employee". In other words, an apprentice engaged in certified standing orders was not an employee for the purpose of contribution prior to 01.06.2010. In the present case, the period of contribution payable is between the year 1996 and 2006. Similarly, tiffin allowances will have to be construed as a sum paid to the employee to defray the special expenses. Therefore tiffin expenses cannot be construed as part of wages. This issue is no longer res integra. In a catena of decisions, this Court has held that the term "special expenses" occurring in Section 2(22) of the Act would not include payment given to the employee to defray tiffin and the meals expenses.

5.The learned counsel appearing for the appellant placed reliance on the decision reported in **2001 1 LLJ - Employees State Insurance Corporation Vs. Mount Mettur Pharmaceutical Limited, Madras**. It has been followed consistently ever since. Answering the substantial questions of law in favour of the appellant, this Civil Miscellaneous Appeal is allowed. The respondent corporation is directed to exclude the stipend paid to the apprentices engaged in the standing orders and the tiffin allowances paid to



the employees while calculating the contribution payable for the aforesaid period. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Presiding Officer, (Labour Court),
Employees State Insurance Court, Madurai.
 2. The Assistant Director.
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road, K.K.Nagar,
Madurai - 625 020.
 3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO Mr.K.C.RAMALINGAM, ADVOCATE IN SR No. 84161
+ 1 CC TO Mr.K.HEMAKARTHIKEYAN, ADVOCATE IN SR No. 84172

SKM

TE/MR-KKR/SAR-II : 17/11/2017 : 3P/6C

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