

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 23.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.1096 & 1097 of 2010
and
MP.Nos.1 & 1 of 2010

M/s.AngloFrench Textiles,
a Unit of Pondicherry Textiles Corporation,
represented by its Managing Director .. Appellant in
both the Appeals

Versus

1. The Presiding Officer,
Employees State Insurance Court cum
II Additional District Court, Pondicherry.

2. The Regional Office, Pondicherry
The Employees State Insurance Corporation,
Regional Office, Pondicherry,
Bouvankare Street, Mudaliarpet,
Ponndicherry-605 004
rep. by its Deputy Director.

3. The Recovery Officer,
Regional Office,
The Employees State Insurance Corporation,
Pondicherry .. Respondents in
both the Appeals

Civil Miscellaneous Appeals filed under Section 82 of
the Employees State Insurance Act, 1948 against the

common order dated 9.3.2010 passed by the II Additional District Judge cum Employees Insurance Court at Pondicherry in ESIOP Nos.4 of 2005 and 7 of 2006.

For Appellant : Ms.M.Elavarasi for
M/s.S.Ramasubramanian
Associates

For Respondent: Mrs.S.Jayakumari for R2 & R3

COMMON JUDGMENT

These appeals arise out of common order dated dated 9.3.2010 passed by the II Additional District Judge cum Employees Insurance Court at Pondicherry in ESIOP Nos.4 of 2005 and 7 of 2006.

2. The appellant is the Principal Employer. The Employees State Insurance Corporation, the second respondent herein has passed two orders dated 07.01.2005 and 15.06.2006 invoking Section 45(A) of the Employees State Insurance Act, 1948 (in short, 'the ESI Act') against the appellant, claiming contribution for a sum of Rs.66,41,731/- (for the period from 1999 to 2003) and Rs.38,71,648/- (for the period from 4/2003 to 06/2005)

payable by the appellant, under three heads, viz., a) Sticking charges paid to the contractors; b) interim relief paid by the appellant to its workers and c) Subsistence allowance paid by the appellant to its employees. Challenging these two impugned orders, the appellant has moved two petitions in ESIOP Nos.4 of 2005 and 7 of 2006 before the Employees Insurance Court, Pondicherry.

3. The learned Employees Insurance Court, Pondicherry, having considered the entire materials placed before it both oral and documentary and upon hearing the learned counsel appearing for both sides, by common order, dated 9.3.2010, while confirming the impugned orders passed by the 2nd respondent, dismissed the ESIOPs filed by the appellant herein.

WEB COPY

4. In these appeals, challenging the common order passed by the Employees Insurance Court, the appellant has raised very many contentions. According to the appellant, though on behalf of the appellant, it was not admitted that

the monies were recovered by way of contribution from the immediate employer in respect of the employees engaged by them and that they kept the same awaiting a decision from this Court in regard to wage revision, the learned ESI Court has mistakenly considered as if the appellant admitted that they recovered the contribution and based on the said assumption, rendered an erroneous finding holding that the appellant is liable to pay the contribution. It is further contended on behalf of the appellant that in fact, the appellant is not the employer who engaged the employees for the work and there was no direct control and supervision by the appellant since the most of the contractors were undertaking the work contract and doing the job work in their own places by employed their own workmen and the contribution under the head of stitching charges paid has to be actually paid by the contractors and despite the appellant pleaded for impleadment of the contractors, the 2nd respondent ESI Court has not impleaded them as parties and arbitrarily fixed 60% of the total amount paid to the contractors as wages. In this regard, the learned counsel for

the appellant relied upon a decision reported in "(2008) 3 SCC 247 (***Bharat Heavy Electricals Ltd. versus ESI Corporation***)" and contended that workmen concerned had been engaged by the immediate employer, i.e. contractors who would be in possession of the relevant records to show as to whether or not any contribution was payable or whether the Act was applicable in respect of the concerned workmen. According to the appellant, though the basic raw material is supplied by the appellant, the contractors still have to buy other raw materials such as threads, needles, machineries and other accessories and that many of the contractors were funning their units in rented places, for which, they have to pay rents, electricity charges, etc. and hence, the amount paid by the appellant to the contractors includes all the above expenses and hence, out of the payment made to the contractors by the appellant, only 25% of the same should be considered as wages and therefore, fixation of 60% of total amount as wages to the employees, is arbitrary and unreasonable.

5. It is further contended that the claim is barred by limitation since admittedly, the claim was made beyond the period of five years from the alleged date of contribution due. The learned counsel for the appellant pointed out that the ESI Corporation made the claim on 21.08.2004 for payment of dues from the year 1999 which is clearly beyond the period of limitation. It is also contended that two interim reliefs were ordered to be paid to the workmen, i.e. Rs.300/- per month from 01.01.1999 and another Rs.300/- per month from 1.1.2000 based on the Government orders issued by the Department of Industrial Development (Industries and Commerce), during the pendency of the reference before the Special Industrial Tribunal while the matter regarding wage revision is sub judice and such interim payments were not taken into account for ESI contribution for the reason that if the final wages fixed by the award is less than the interim relief paid to the workers, then the excess amount so paid, cannot be recovered from the workers. It is finally contended that even if at all the interim reliefs paid to the workmen were added with the wages, then many of the

workers would come outside the purview of the ceiling limit. Therefore, according to the appellant, if the employees are not covered under the EST Act, the question of payment of contribution would not arise. With these contentions, the learned counsel sought for setting aside the impugned common order passed by the learned ESI Court.

6. In fact, the above issues were placed before the learned ESI Court and the learned ESI Court has dealt with each issue in a very cogent and well considered manner. Section 40 of the ESI Act emphasizes that the principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer both the employer's contribution and the employees' contribution. The employer shall in the case of an employee directly employed by him, be entitled to recover the employees contribution from his wages. Any sum deducted by the employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose paying the contribution in respect of which,

it was deducted and the employer shall bear the expenses for remitting the contributions to the Corporation. The same duty is cast upon the principal employer to pay contributions in respect of the employees employed by the contractor, i.e. immediate employer or the principal employer. Section 41 of the ESI Act envisages recovery of contribution from immediate employer. A principal employer who has paid contribution in respect of an employee employed by or through an immediate employer shall be entitled to recover the amount of contribution so paid (both employer and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. Therefore, as per the provisions of the ESI Act, it is the duty of the principal employer to deposit his own as well as employees contributions in respect of all employees including the employees employed through the immediate employer (i.e. contract labour), the principal employer can recover the employees contribution by way of deductions from his

wages. In respect of employees employed through the immediate employer, the principal employer can recover the amount of contribution so paid (i.e. employer's contribution and the employees contribution) from the immediate employer. Therefore, the appellant being the principal employer, though there was no direction supervision, however, cannot escape from the statutory liability of paying employees contribution and after paying the contribution at first instance, can recovery the said amount so paid towards contribution from the immediate employer. In this case, admittedly, the appellant has not paid any such contribution to the employees, engaged by the immediate employer.

7. On going through the record, it reveals that despite the opportunity given by the 2nd respondent Corporation to produce the particulars regarding the contractors (immediate employer) engaged by the appellant for the relevant period along with the details of the amounts of contract wages paid to the contractors and also towards ESI contribution in compliance of the provisions of the ESI Act,

the appellant had failed to furnish the same. On verification of the ledgers produced by the appellant, it appears that the appellant engaged as many as 14 contractors, but no details regarding contractor-wise and year-wise were not produced and there was no evidence adduced that the appellant being the principal employer had made any ESI contributions in respect of the employees. In fact, all the contractors were exclusively engaged for the purpose of stitching work given by the principal employer and the appellant failed to produce the deeds of contracts entered between the appellant and the contractors so as to arrive at the nature of contract and the quantum of wages and the cost of materials, if any included in the payments of stitching charges made by the appellant. In such circumstances, finding no alternative, the Assessing Officer determined 60% of the total expenditure as wages under the Act and ordered that contributions are to be paid thereof.

8. As regards the contention that the amounts paid as interim relief if added with the wages, then many of the

workers would come outside the purview of the ceiling limit is concerned, it is pertinent to note that despite the opportunity, the appellant has not proved as to how the employees would go out of coverage of consideration by adding the interim relief to the wages. The next contention that the claim is barred by limitation since admittedly, the claim was made beyond the period of five years from the alleged date of contribution due also cannot be acceptable since it is settled position of law that there is no limitation for the 2nd respondent Corporation to claim contribution and recover from any employer who grossly violated the payment towards ESI contribution.

9. For the foregoing reasons, this Court does not find any scope to interfere with the well considered common order passed by the ESI Court in order to interfere with the same. In fact, it is settled law that the employer cannot escape from paying of contribution in compliance of statutory provisions of ESI Act which mandates that every employee is required to be compulsorily insured for which purpose, the

employer is bound to make his part of contribution and at the same time, every employee is also bound to make his contribution.

10. In the result, the Civil Miscellaneous Appeals fail and they are dismissed as devoid of merits. Consequently, connected MPs are closed.

suk

23-10-2018

Index: Yes/No

Internet: Yes/No



WEB COPY

S.RAMATHILAGAM, J.

suk



**Pre delivery judgment in
C.M.A.Nos.1096 & 1097 of 2010**

WEB COPY

23.10.2018