

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2018

PRONOUNCED ON : 29.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

CMA No.2289 of 2013

The Deputy Regional Director
The Employees State Insurance Corporation,
Sub Regional Office,
A.P. Office Complex,
IV Floor, 333, Cross Cut Road,
Coimbatore - 641 012. Appellant

versus

The Management of
The Lakshmi Mills Company Ltd.
Rep. by its Vice President - Operations
Mr.N.Jayachander, Coimbatore - 641 037 Respondent

Prayer:

Civil Miscellaneous Appeal against the Order of the ESI
Court (Labour Court), Coimbatore, dated 26.03.2012 and made in
ESI OP No.6 of 2005.

For Appellant : Mr.G. Bharadwaj

For Respondent : Mr.Haroon Al Rasheed
for M/s.T.S.Gopalan and Co.

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Order
of the ESI Court (Labour Court), Coimbatore, dated 26.03.2012
made in ESI OP No.6 of 2005.

2. The petitioner/respondent herein has filed a petition before the trial Court stating that it is a Textile Mill engaged in the manufacture of yarn and cloth and covered under the ESI Act and that it has been complying with the provisions of the Act. The respondent has also been employing workmen and has been paying the wages. The petitioner / respondent has paid certain amounts as conveyance allowance to the staff members owning vehicles, to defray the special expenditure incurred by them towards travelling. The purpose of granting the conveyance allowance is in the nature of travelling as the object of the payment is to enable the employees to reach his place of work and to defray a part of the cost incurred on the travel from the place of their residence to the place of the work. It is also the averment in the petition, that the said travelling is not wages or remuneration or additional remuneration attracting the contribution, as envisaged under Section (2) (22) of the Act as Travelling allowance is excluded from the purview of the wages under the said Act. The other averment made by the petitioner before the trial Court is that the conveyance allowance is paid in cash for the purpose of facilitating the employees to come to the place of work.

3. It is the grievance of the petitioner / respondent herein that on 27.07.2004, the respondent made an inspection and issued a letter demanding contribution on travelling allowance paid during the period from 01.04.2002 to 31.03.2003. Thereafter, a show cause notice was issued to the Management / respondent herein calling upon it to show cause as to why a sum of Rs.31,035/- should not be levied as contribution for the amount of travelling allowance paid to the tune of Rs.4,77,461/= to the workmen for the period 01.04.2002 to 31.03.2003. The Management / respondent herein submitted a reply and after affording an opportunity of personal hearing, the appellant herein, without considering the explanation made by the Management, passed an order dated 29.12.2004 under Section 45-A of the Act, confirming the levy as proposed in the show cause notice for a sum of Rs.31,035/- for the contribution from 01.04.2002 to 31.03.2003 and also directed to effect the payment within 15 days after the receipt of the order.

4. It is the grievance of the Management / respondent herein that they are not liable to pay the contribution as claimed and that the order of the appellant herein in No.56-5952-11/PNP/ME, dated 29.12.2004 levying contribution of Rs.31,035/- is liable to be set aside. Hence, petition was preferred by the Management before the appropriate authority.

5. The respondent / appellant herein in the counter statement submitted their objection by stating that the petitioner paid conveyance allowance along with wages every month, since it is paid as an additional remuneration, it has to be treated as wages. To prove its case, the appellant herein marked documents Exs. P1 to P3 before the Tribunal.

6. The Tribunal after analysing the documents and also the written submissions filed by the petitioner / respondent herein has passed an order that the demand made by the respondent for payment of contribution on the amounts paid as conveyance allowance is against the provisions of the ESI Act, since travelling allowance or conveyance allowance is specifically excluded from the definition of Wages as defined Section 2(22) of the Act.

7. With regard to the finding whether the conveyance allowance would fall under the definition of wage, both the petitioner and the respondent advanced their views before the Tribunal. The Tribunal has given a finding that the respondent is not entitled to claim contribution on the amounts paid as conveyance allowance and has set aside the order passed by the appellant herein.

8. The learned counsel for the appellant has placed reliance in the Judgment of this Court in Management of Oriental Hotels Ltd., Versus

Employees' State Insurance Corporation, (LLJ 2002 P 44), wherein it has held that

8. In so far as the conveyance allowance is concerned, even though it forms part of the wages being the amount payable in terms of the contract of employment, having regard to the settlement and even de-hors the settlement, the payment of the amount would fall within the ambit of additional remuneration". Nevertheless, that amount will have to be excluded having regard to the specific exclusion provided in the definition itself for travelling allowance or the value of any travelling concession. The conveyance allowance paid is in the nature of travelling allowance as the object of that payment is to enable the employee to reach his place of work and to defray a part of the cost incurred on the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of that benefit of free travel from

his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilised on the travel from place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of Section 2 (22) (b) of the Employees' State Insurance Act.

9. The learned counsel for the respondent has placed reliance in the Judgment of this Court in Management of Magus Customer Dialog Private Ltd., versus Deputy Director, Employees' State Insurance Corporation, Chennai. (LLJ 2011 III P 693), wherein it has held that

11. It is misnomer to construe a travelling allowance or the value of travel allowance as conveyance allowance. But in that case, the Division Bench referred to the earlier judgment in Management of Oriental Hotels Ltd., V. Employees' State Insurance Corporation 2002-I-LLJ-14, wherein the Court found that a conveyance allowance will be paid in the nature of travelling allowance as the object of payment is to enable the employee to reach his place of work and to defray a part of the cost incurred on the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of the benefit of free travel from his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilised on the travel from place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of Section 2 (22) (b) of the E.S.I. Act. From the judgment in Management of Oriental Hotels Ltd., v. Employees' State Insurance Corporation (supra) case, the Division Bench in Regional Director, ESIC, Madras v. Sundaram Clayton, Ltd., Moppet Division, Madras (supra) case held that though the allowance labelled as a conveyance allowance, it will form part as an additional remuneration and will come under the exclusion provided under Section 2 (22) of the Act.

10. From the ratio laid down by this Court in the decisions supra, it is evident that travelling allowance given to employees to defray part of the expenses and would not fall within the definition of wages as defined u/s 22 (2) (c) of the

ESI Act. This Court is in respectful agreement with the ratio laid down in the above decisions. Accordingly, this Court has no hesitation to hold that the order passed by the Tribunal is fair and proper and no interference is called for with the well considered findings recorded by the Tribunal.

11. In the result, the appeal fails and the same is dismissed. However, in the circumstances, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To

The ESI Court (Labour Court), Coimbatore,

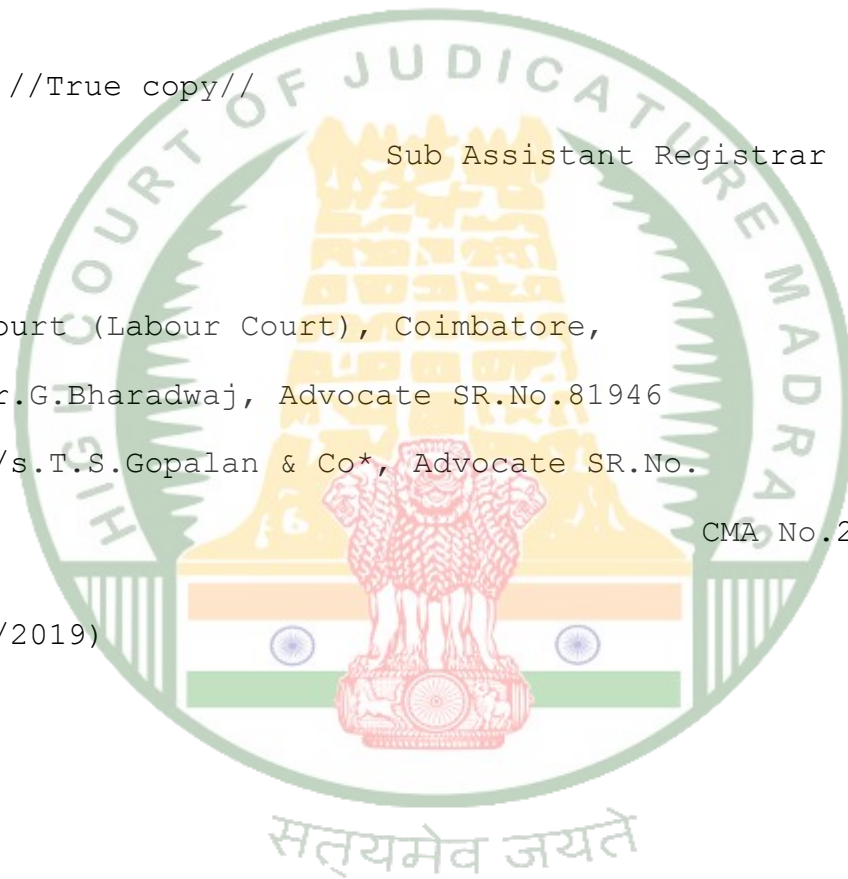
+1cc to Mr.G.Bharadwaj, Advocate SR.No.81946

+1cc to M/s.T.S.Gopalan & Co*, Advocate SR.No.

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KS (CO)

GMV (02/01/2019)



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