

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2732 of 2015 and

M.P.No.1 of 2015

M/s.Wooltop Designs Pvt. Ltd.,

Rep. by its Director - H.E.Abdul Azeez

F/72, Anna Nagar East,

Chennai - 600 102.

.. Appellant/Petitioner

-Vs-

Employees State Insurance Corporation,

Rep. by its Regional Director,

143, Sterling Road,

Chennai - 600 034.

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Act, 1948, to set aside the Judgment and order of the Employees State Insurance (Principal Labour Court), Chennai dated 24.07.2015 in E.I.O.P.No.77 of 2007 and allow the appeal.

For Appellant : Mr.S.Ravindran

For Respondent : Mr.T.N.C.Koushik

JUDGMENT

This Civil Miscellaneous Appeal is directed against an Order of the Employees State Insurance (Principal Labour Court), Chennai dated 24.7.2015 made in E.I.O.P.No.77 of 2007 and to allow the appeal by setting aside the said order.

2.The appellant private limited establishment herein is an institution covered under the provisions of ESI act and according to the appellant it was paying its contribution duly towards its eligible employees before the respondent employees State Insurance Corporation.

3.The trade practice of the appellant establishment is to tender job work to third party establishments and the job work will be carried out in the premises of such third party establishments using their own machinery and workmen in their premise and the appellant will neither look out nor supervise the nature of work employed in such third party establishments.

4.However in the said factual backdrop the appellant received a show Cause Notice from respondent claiming contribution on one such job work done in a third party establishment and the appellant give a suitable reply accordingly.

5.However regardless of the above facts, the Enquiry Officer appointed in this regard by the respondent, by an order dated 07.05.2007 held that appellant establishment had not proved its stand regarding job work done in third party establishment and hence held the appellant liable to pay contribution on payment made to third party establishments. As against the said order the appellant filed E.I.O.P.77 of 2007. The trial commenced and evidence was adduced by either side.

6.It is the case of the appellant that by Exhibit P-21, ESI Corporation circular dated 25.10.2017 burden of prove was on the ESI Corporation regarding Principal Employer supervision on the job work carried in third party establishments. It is further case of the appellant that basing upon the said circular the appeal has to be allowed. Whereas the Court below instead of allowing the Appeal but remanded the matter to the respondent establishment for fresh consideration and the said order of remand is under challenge in this civil miscellaneous appeal.

7.I heard Mr.S.Ravindran, learned counsel for the appellant and Mr.T.N.C.Kaushik, learned counsel for the respondent and perused the entire materials available on record.

8.Hearing upon rival submissions and on perusal of the records it is not in dispute that the appellant establishment is covered under the ESI act and they are involved in manufacture and sale of home furnishing products. According to appellant establishment they duly complied with the provisions of the ESI act and paid contribution towards their regular employees.

9.It is seen that the dispute on hand relates to a sum of Rs. 8,56,17,718/- paid to outside contractors in respect of various job work during the year 2000 to 2005.

10.According to the appellant establishment certain works will be given to third parties on job work basis and they will

not supervise the third party contractors who were given with such job works and the appellant establishment will not supervise the employees involved in job work entrusted to such third party contractor. In actual such job work will be done outside the premises of the appellant establishment. Thus it is their case that they are not liable to contribute towards such employees of third party contractors.

11.In this regard the appellant relied upon a circular in exhibit P21 issued by the respondent, further reliance was also made by the appellant's counsel over a Decision of the Hon'ble Apex Court reported in 2010 (2) LLJ 860 and a Decision of this Court reported in 2007 3 LLN 934.

12.The records disclose that totally 21 documents stand marked before the court below, in which 16 remained marked only before the Court below and that they were not produced before the enquiry officer by the appellant and only 4 documents remained produced before the enquiry officer of the respondent establishment.

13.Out of 20 documents produced before the court below 16 were not placed before the enquiry officer of the respondent and in the said circumstance the Court below by setting aside the order of the enquiry officer has remanded the matter back to the file of Enquiry officer for passing a fresh order by taking into consideration of the Documents Exs.P1 to P20.

14.Therefore, this Court is unable to find fault with the impugned order of Remand. The respondent has also filed counter submitting that they are under obligation to pass an order afresh after considering all the documents on record viz. Exs.P1 to P20.

15.In view of the above discussion, this Civil Miscellaneous Appeal is disposed of by directing the appellant to produce the documents in Exhibits-P12 to P16 which are marked before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent Employees State Insurance Corporation, Chennai, is directed to pass an appropriate order in the manner known to law within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To  
The Employees State Insurance  
(Principal Labour Court), Chennai.

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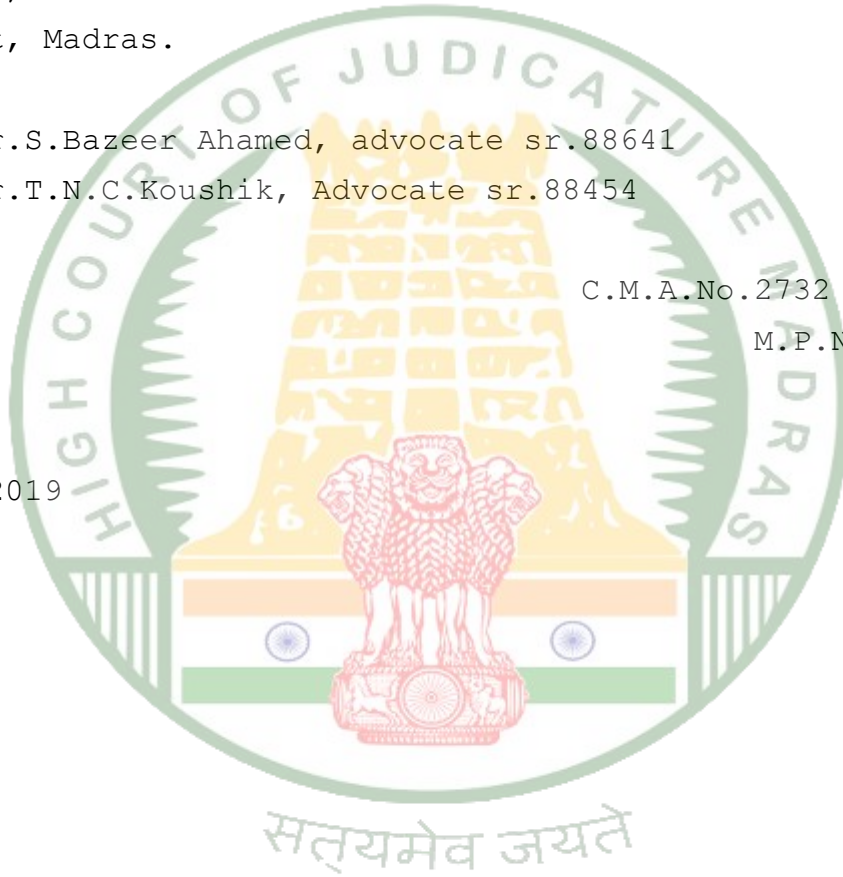
The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to Mr.S.Bazeer Ahamed, advocate sr.88641

+1cc to Mr.T.N.C.Koushik, Advocate sr.88454

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