

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.209 of 2011  
and M.P.No.1 of 2011

M/s.Dixcy Textiles (P) Ltd.,  
Rep. by its Director,  
Mrs.Parveen Kumari Sikka,  
D.No.9, 10, 11, Kizhakkal Thottam,  
Sakthi Nagar,  
Karumarampalayam,  
Mannarai Post, Tiruppur - 642 607..... Appellant/Petitioner

Vs.

The Deputy Director,  
The Employees State Insurance Corporation,  
Sub-Regional Office,  
1867, Trichy Road,  
Coimbatore - 641 045.

... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948, against the order dated 24.11.2010 made in E.S.I.O.P.No.20 of 2007 on the file of Employees State Insurance Court-cum-Labour Court, Coimbatore.

For Appellant : Ms.R.Gouri  
For Respondent : Mr.K.Prabakar

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order dated 24.11.2010 made in E.S.I.O.P.No.20 of 2007 on the file of Employees State Insurance Court-cum-Labour Court, Coimbatore, dismissing the claim of the employer as per the judgment of the Hon'ble Full Bench of this Court in the case of E.S.I. Corporation, rep. by its Regional Director, 143, Sterling Road, Madras - 34 Vs. Bethall Engineering Company, rep. by Mrs.S.V.Umayal, Proprietrix, 5, Poonamallee High Road, Madras - 602 102 reported in 2007 (4) CTC 529.

2. The case of the appellant is that they are involved in the manufacture of garments. For that purpose, they engage

outside contractors for cutting and stitching of materials. The respondent/ Employees State Insurance Corporation have accepted the engagement of third party contractors for the purpose of stitching charges. But, in the case of cutting charges, the claim was not accepted, as the appellant has not produced delivery challan, gate pass, etc. The Employees State Insurance Court has remanded the matter with regard to stitching charges for the purpose of producing the list of third party contractors in order to enable the Employees State Insurance Corporation to take further steps.

3. On the other hand, the claim with regard to cutting charges was rejected on the ground that the delivery challan, gate pass, etc., were not produced and there is no proof of movement, both inward and outward. The Employees State Insurance Court has also not accepted the submissions of the Corporation and held that the employer is liable to make contribution.

4. On a perusal of the materials before this Court, it is seen that the Insurance Inspector had reported that he visited few addresses furnished by the employer to which payments were made being situated in non implemented area and he found them not in existence.

5. From a perusal of such statement, it could be inferred that the employer had produced bills and general ledger for verification and it has not implied that the payments were also made through third parties. But, only because of non-production of delivery challan and gate pass, the claim of the employer has not been accepted.

6. In the other case with regard to stitching charges, the parties were given opportunity to produce the list of third party contractors and to take appropriate steps for collection of contribution from the individual who are liable to pay contribution.

7. This Court, after considering the materials, is of the view that the finding of the Employees State Insurance Court is not based on any reasons. Non-production of delivery challan and gate pass, will not exonerate the Employees State Insurance Corporation from getting further details from the employer. There is nothing on record to show that whether the cutting machines are within the premises to imply lead to a presumption that cutting should have been done within the premises. The Insurance Inspector has not taken efforts to find out the factum of engagement of workers within the premises by the employer towards cutting charges and the bills and general ledger produced for verification do not reflect any payments made to

out side contractors.

8. Without any clear statement, observation or finding under Employees' State Insurance Act, the Employees State Insurance Court has passed an order under Section 43(a) of the Act. Since the issue pertains to stitching charges, the matter is remanded to the authorities for consideration of the list of outside agencies, who had undertaken the contracts or for the purpose of producing list of third party contractors.

9. The learned counsel appearing for the appellant would rely on the judgment of the Hon'ble Full Bench of this Court reported in 2007 (4) CTC 529, cited supra, wherein, it has been held that when a job work is given to third party, the Principal Employer has right to accept or reject the work done by the contractors and he will not be liable to pay contribution. This appeal can be straightaway allowed by following the ratio laid down by the Hon'ble Full Bench of this Court.

10. Further, the contribution to be made to the Employees State Insurance Corporation shall not be left out, for the lapse of the officials of Employees State Insurance Corporation. For that purpose, the matter is remanded to the authorities to find out the existence of third party contractors and the payment details made to them.

11. In view of the discussions made above, the order dated 24.11.2010 in E.S.I.O.P.No.20 of 2007 passed by the Employees State Insurance Court-cum-Labour Court, Coimbatore, is set aside and the matter is remanded to Employees State Insurance Corporation for fresh consideration. The appellant/employer is directed to furnish the names of third party contractors and payment details to the Corporation for taking appropriate steps.

12. In the result, this Civil Miscellaneous Appeal is disposed of with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

The Employees State Insurance Court-cum-Labour Court,  
Coimbatore.

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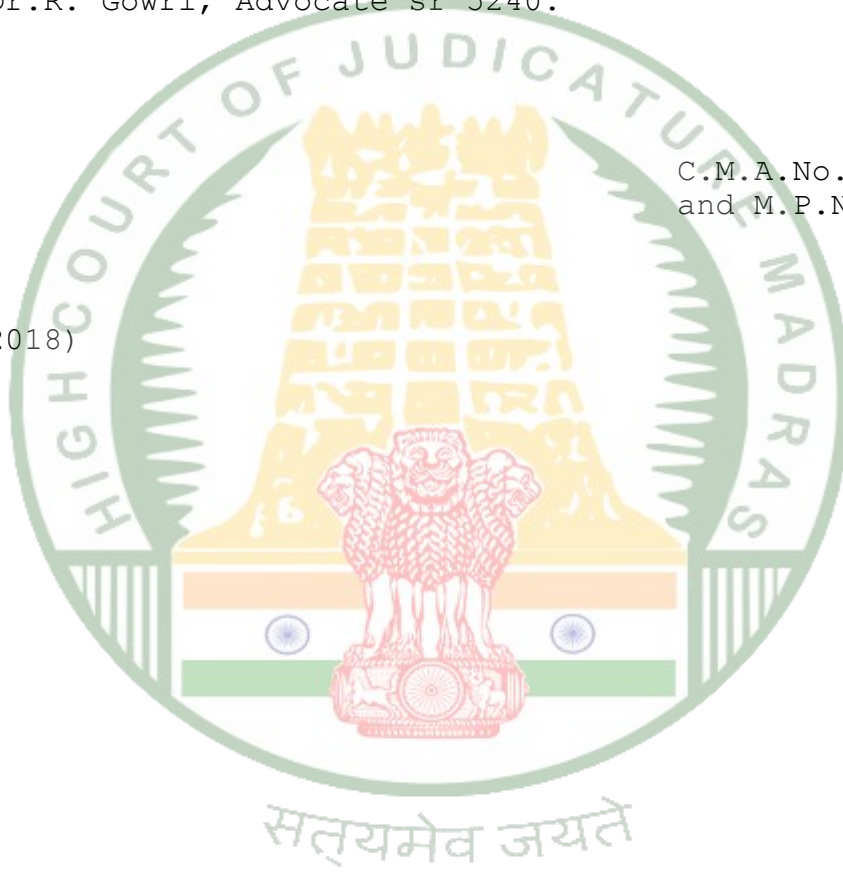
The Section officer  
VR Section, High Court, Madras.

+1 CC to Mr.K. Prabakar, Advocate sr 5284.

+1 CC to Dr.R. Gowri, Advocate sr 5240.

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PVS (CO)  
SP (27/04/2018)



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