IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

333 **FAO No. 1247 of 1991 (O&M)**
Date of Decision :19.2.2018

M/s. Zeeto Engineers and Fabricators **....Appellant**

VS

Employees State Insurance Corporation **....Respondent**

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Rajesh Goyal, Advocate
for the appellant.

Mr. Vikas Suri, Senior Standing Counsel
for the respondent.

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AJAY TEWARI, J.(Oral)

This appeal has been filed against the judgment passed by the E.S.I. Court, Ambala dismissing the petition under Section 75 of the E.S.I. Act claiming contribution amount of Rs.3467-90/- paise up to 31.7.1987. The claim of the appellant was that this amount had been paid in order to boost the production which was showing a downward trend, as a result of electricity power cuts, and after some time petitioner installed generator set and had discontinued the payment and the payment was made after a period of two months. The Court held that amounts paid as per ledger were paid in rupees and paise and even though they were paid after two months but it was shown to be paid on month to month basis and came to the conclusion that in terms of the decision of the Supreme Court in the matter of ***"M/s Harihar Polyfibres vs. Regional Director, ESI Corporation 1984 AIR (SC) 1680"*** the above represented remuneration. Learned counsel has argued that a perusal of the Section 2(22) of the E.S.I. Act specifically excepts payments made at intervals of more than two months and consequently, could not have been counted. Learned counsel has relied upon "***Handloom House, Ernakulam vs. Regional Director, ESI 1999 AIR (SC) 1697"*** where their Lordships held as follows:-

"11. So the only question to be determined in this case is whether incentive bonus and sales commission would fall within the ambit of the aforesaid third category of remuneration or not. It is clear that any additional remuneration paid at intervals exceeding two months has been excluded by specific terms, from the purview of the definition. What is the rationale for excluding such remuneration paid at intervals exceeding two months from the scope of wages? Though we did not get any clue from the Statement of Objects and Reasons for the Bill (which became Employees State Insurance (Amendment) Act *1951), the rationale could be discerned as inter-linked with the definition clause "wage period" in Section 2(23). It reads thus:*

> *"wage period" in relation to an employee means the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise."*

*12.*Section 40 *of the Act casts liability on the Principal Employer to pay the contribution to the Corporation, whether it is of employers or of employee's contribution. Of course the Principal Employer is allowed to recover that part of "employer's contribution" by making deduction from his wages. Section 39(4)of the Act states:*

> *"The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations."*

13.No employer shall have the permission to dodge the payment of contribution on the premise that annual payments have to be worked out. Normally, the wage period is one month, but the Parliament would have thought that such "wage period" may be extended a little more, but no employer shall make it longer than two months. This could be the reason for fixing a period of two months as the maximum period for counting additional remuneration as to make it part of "wages" under the Act."

This judgment was followed by the subsequent judgment of the Supreme Court passed by a three Judge Bench in the matter of "***Whirlpool of India Ltd. vs. Employees' State Insurance Corporation 2000 AIR (SC) 1190".*** However, in the present case the statement of AW-1 that is the witness of the appellant himself had admitted that payment made on 10.8.1983 was for the period of July, 1983 and further the payment made on 7.9.1983 was for the month August 1983, the payment made on 7.10.1983 was for the month of September, the payment made on 7.11.1983 was for the October, 1983

Consequently, the argument raised by counsel for the appellants has to be rejected. The payments have rightly been held to have been made on monthly basis.

The appeal stands dismissed.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

19.2.2018 **(AJAY TEWARI)**
anuradha **JUDGE**

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No