IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:13.02.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.3258 OF 2017
and
C.M.P.NO.20301 OF 2017

M/s.Sambandam Spinning Mills Ltd.,
Rep.by its Managing Director - S.Devarajan,
Kamaraj Nagar Colony,
Salem-636014. ... Appellant

Vs.

1.Assistant Director,
Employees State Insurance Corporation,
39/57, Three Roads,
Salem-636009.

2.R.Ganapathi ... Respondents

PRAYER: Civil Miscellaneous Appeal under Section 82 (2) of the Employees State Insurance Act, 1948, praying to set aside the Judgment and order of the Labour Court, Salem, dated 14.09.2017 in E.S.I.O.P.No.2 of 2011 confirming the order of the first respondent dated 10.05.2010 in proceedings no.63000097960000101/SRO/SALEM.

For appellant : Mr.Ravindren
Senior Counsel
for Mr.S.Bazeer Ahamed

For respondent-1 : M/s.S.Jayakumari

For respondent -2 : M/s.Anbazagan

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J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant seeking against the order of the Labour Court, Salem, dated 14.09.2017 in E.S.I.O.P.No.2 of 2011 confirming the order of the first respondent dated 10.05.2010 in proceedings no.6300097960000101/SRO/SALEM.

2. The appellant/spinning mills engaged in manufacturing of yarn for the purpose of conversion of cotton to yarn and

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outsourcing the same to various establishments. The contribution for conversion charges paid to those establishments were questioned by the respondent/Employees State Insurance Corporation. Out of 13 establishments, Vidhyasakaran Yarn Doubling Unit, Saminathapuram and City Tex, Jakireddipatti are situated in Employees State Insurance implemented area. Since the appellant has not made contribution for conversion charges to these establishments, Employees State Insurance corporation has issued notice to the second respondent and initiated proceedings for recovery of contributions due. According to the appellant, the conversion charges paid to the establishments outside the spinning mill, does not fall within the definition of wages under Section 2(22) of Employees State Insurance Act, 1948. However, the first respondent passed an order under Section 45 (A) of the Employees State Insurance Act, 1948, demanding payment of Rs.55,126/- to be paid towards contribution to the Employee Insurance Corporation. The appellant has challenged the same before the Labour Court, Salem in E.S.I.O.P.No.2 /2011. The Labour Court considering the factual aspects has held that the payments made towards conversion charges are not accepted and accordingly, dismissed the petition. Aggrieved over the same, the appellant is before this Court.

3. According to the appellant, the Hon'ble Full Bench of this Court, reported in 2008 (1) LLJ 278 [E.S.I. corporation vs. Bethall Engineering Company] has categorically held that the work carried out through outsourcing and payment made towards conversion charges, do not fall under the definition of wages as it cannot be construed as effective and meaningful 'supervision' as envisaged under Section 2(9) of the Act. The said judgment was taken on appeal before the Hon'ble Supreme Court which eventually confirmed the same. In view of the same, it is very clear that the conversion charges paid to the establishment outside the premises of the appellant mill will not fall under definition of wages and the employer is not liable to pay compensation as demanded by the Employees State Insurance Act, 1948 Corporation.

4. In the similar circumstances, following the judgment of the Full Bench of this Court in C.M.A.No. 1516 of 2010, [Deputy Director, Insurance No.V, Employees' State Insurance Corporation Vs. India Pistons Repco Limited cited in (2014) 1LLJ 574 Madras], this Court has set aside the order demanding contribution for conversion charges paid towards the workdone by third parties.

5. In view of the Judgments of the Hon'ble Supreme Court as well as the Full Bench of this Court, the order of the Labour Court, Salem in E.S.I.O.P.No.2 of 2011 confirming the order passed by the Employees State Insurance corporation under

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Section 45 A of the Employees State Insurance Act, 1948, dated 10.05.2010, stands set aside. In the result, the Civil Miscellaneous Appeal is allowed. The appellant is entitled for refund of all the deposits made, if any, with accrued interest. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bkn/tk

To

1.The Assistant Director,
Employees State Insurance Corporation,
39/57, Three Roads,
Salem-636009.

2.The Labour Court,
Salem.

3.The Section Officer,
V.R.Section,
High Court, Madurai-104.

+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.13065

C.M.A.NO.3258 OF 2017
and
C.M.P.NO.20301 OF 2017

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RRS(15/04/2019)

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