

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.M.A. No.3779 of 2013 and
M.P.No.1 of 2013

M/s. Deccan Enterprises,
No.4, 7th Avenue,
Harrington Road, Chennai - 600 031.

... Appellant

v.

1. The Regional Director,
E.S.I. Corporation,
No.143, Sterling Road,
Nungambakkam, Chennai - 600 034.

2. The Assistant Regional Director,
E.S.I. Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 82(2) of E.S.I. Act, 1948 against the order dated 28.01.2011 passed in E.S.I. O.P.No. 91 of 2001 on the file of the E.S.I. Court (Principal Labour Court), Chennai.

For Appellant : Mr.S. Haroon Al Rashed
for Mr. V.M. Narayanan

For Respondents : Mrs. S. Jeyakumari

J U D G M E N T

Challenging the order passed in E.S.I. O.P.No. 91 of 2001, on the file of the Employees State Insurance Court (Principal Labour Court), Chennai, the Management has filed the above Civil Miscellaneous Appeal.

2. The 1st respondent passed an order dated 29.07.1991 under section 45-A of the E.S.I. Act claiming a sum of

Rs.57,48,787.44 towards contributions for the period from 1982 to 31.12.1985 together with interest. Challenging the same, the appellant filed E.I.O.P.No.35 of 2001 before the Principal Labour Court, Chennai and the Labour Court, by order dated 13.05.2008, held that the appellant is liable to pay contribution of Rs.56,356/- to the respondent and remanded the matter back to the 1st respondent for fresh consideration.

3.1 It is the case of the appellant that they employed some staff and some casual workers and got the readymade garments for export, manufactured by independent establishments outside the appellant's premises. While so, the 1st respondent issued a communication dated 28.04.1980 covering the appellant's establishment with effect from 1.3.1980 under the ESI Act. However, neither the appellant was issued with any show cause notice nor given any personal hearing before the decision on coverage was taken.

3.2 Subsequently, the 1st respondent issued a C-18 notice on 18.08.1981 for contributions for the period from 1.3.1980 to 30.05.1981 and in spite of the appellant disputing the coverage by a reply dated 22.04.1982, the 1st respondent without even giving a personal hearing, issued an order dated 29.4.1986, under section 45-A of the Act, for Rs.9,702/- towards contributions for the above said period plus interest.

3.3 The 1st respondent issued another C-18 notice on 02.02.1987 to show cause as to why orders should not be passed under section 45-A of the Act for Rs.58,41,727.87 towards contributions for the years 1982 to 1985, for which, the appellant gave their reply. Subsequently, the 1st respondent issued an order dated 29.07.1991 under section 45-A of the Act for the net contribution amount of Rs.57,48,787.44. Challenging the same, the appellant has filed the E.I.O.P.No.35 of 2001 before the Labour court.

4. In the counter filed by the 1st respondent, it has been stated that on 16.11.1988, the appellant has agreed to pay the contributions in respect of the expenses relating to cartage collie and repairs and maintenance from 1982 to 1985.

5. Before the Labour Court, on the side of the appellant, D.W. 1 was examined and 10 documents, Exs.P-1 to P-10 were marked and on the side of the respondent, R.W.1 was examined and 3 documents, Exs. R-1 to R-3 were marked.

6. After considering the case of both the parties, the Labour Court held that the appellant is liable to pay

contributions to the tune of Rs.56,356/- and remanded the matter back to the 1st respondent for fresh consideration. Challenging the same, the appellant has filed the above Civil Miscellaneous Appeal.

7. The appellant has raised the following substantial questions of law in the above Civil Miscellaneous Appeal:-

"(i) Whether the learned Judge after setting aside the order passed under section 45-A of the E.S.I. Act had not erred in remanding the matter to the respondents Corporation for fresh disposal?

(ii) Whether the learned Judge was right in directing the respondents to pass afresh a C-18 notice and 45-A order under E.S.I Act especially when the law does not contemplate?

(iii) Whether the learned Judge had not erred in remanding the issue despite the law laid down by the Supreme Court as also Full Bench of the Madras High Court that no contributions need be made in respect of independent contractors?

(iv) Whether the order of the learned Judge remanding the matter to the respondents for fresh disposal is in violation of Amended Section 45 A of the E.S.I. Act, 1948?"

8. Heard Mr.S. Haroon Al Rashed, learned counsel appearing for the appellant and Mrs. S. Jeyakumari, learned counsel appearing for the respondents.

9. Mr.S. Haroon Al Rashed, learned counsel appearing for the appellant submitted that the appellant is engaged in the business of exporting readymade garments and in the course of their business, the appellant firm used to get the readymade garments manufactured by independent establishments outside their premises. The learned counsel further submitted that the appellant did not have the power of supervision over the said independent establishment. The learned counsel also submitted that in such circumstances, the Full Bench of this Court in the judgment reported in 2008 (1) LLJ 278 (MAD) [E.S.I. Corporation rep. By its Regional Director v.. Bethall Engineering Company, rep. By Mrs.S.V.Umayal, Proprietrix] has held as follows:-

" ... the right to reject or accept work on

completion, on scrutinizing compliance with job requirements as accomplished by a contractor, the immediate employer through his employees, is by itself cannot be construed as effective and meaningful 'supervision' as envisaged under section 2(9) of the Employees State Insurance Act, 1948."

Further, the learned counsel submitted that in the un-reported Judgment dated 12.11.2013 made in C.M.A.No.3136 of 2010, in respect of the very same appellant-company, this Court, following the Full Bench Judgment cited supra, held as follows:-

" ... 9. It is not in dispute that the independent contractor with whom the job works were entrusted, do the job work at their factory premises. It is not the case of the appellant Corporation that the employees of the independent contractors were placed under the control or supervision of the respondent or a representative or an officer of the respondent who would be in a position to give on the spot instructions as to how the work was to be accomplished. It is also not the case of the appellant Corporation that the respondent herein or its officer were given power to take any action against the erring employees of the independent contractor in respect of their employment in accomplishment of the job work entrusted to the contractor. On the other hand, based on the admitted position that the respondent who has given job work to the independent contractor, does have the authority to prescribe specification and quality and also the power to reject the finished products if they do not conform to such specification or quality, the learned counsel for the appellant would contend that the said power will no doubt exhibit the power of supervision and control over the employees of the independent contractors. If it is a case of lending of the employees of the independent contractors to do work in the factory premises of the respondent, then there cannot be any scope for the respondent to escape the liability since Section 2(9)(ii) of E.S.I. Act contemplates such liability.

10. On the other hand, the independent contractors have to do the job work with their own employees in their premises and supply only the finished goods to the respondent herein. As

pointed out supra, the power to prescribe specifications and quality and the further power to reject goods in case they do not conform to such specifications or quality will not amount to supervision or control over the employees of the independent contractors.

11. When such a question arose before this Court in a case before a learned Single Judge of this Court, the learned Single Judge, pointing out conflicting views of two different Division Benches, referred the matter to a larger Bench. On such reference, a Full Bench consisting of the then Chief Justice and two other hon'ble Judges of this Court was constituted. The Full Bench in the reference viz., E.S.I. Corporation rep. By its Regional Director vs. Bethall Engineering Company, rep. By Mrs.S.V.Umayal, Proprietrix ((2008)1 LLJ 278 MAD) has held in categorical terms that the right to reject or accept work on completion, on scrutinizing compliance with job requirements as accomplished by a contractor, the immediate employer through his employees, is by itself cannot be construed as effective and meaningful 'supervision' as envisaged under section 2(9) of the Employees State Insurance Act, 1948.

12. Following the said dictum made by the Full Bench of this Court, the learned Judge of the E.S.I. Court held that the employees of independent contractors could not be held to be the employees of the respondent as their principal employer for the purpose of payment of contribution under the E.S.I. Act. Since the question raised by the appellant as Substantial question of law has already been settled and answered by a decision of the Full Bench of this Court, the same cannot be projected as a substantial question of law. Apart from that, the said question of law as decided by the Full Bench of this Court has been applied by the E.S.I. Court without any deviation. Therefore, this Court comes to the conclusion that there is no merit in the appeal and the same deserves to be dismissed. ..."

10. Countering the submissions made by the learned

counsel appearing for the appellant, Mrs. S. Jeyakumari, learned counsel appearing for the respondents submitted that the appellant has not produced the necessary documents to establish their contentions before the authority and therefore, the order passed by the Labour Court is proper. However, the learned counsel submitted that there cannot be any dispute with regard to the ratio laid down by the Full Bench which was also confirmed by the Hon'ble Supreme Court in the Special Leave Petition.

11. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that for the earlier period in respect of the very same company, this Court, in C.M.A.No.3136 of 2010, by order dated 12.11.2013 held that the independent contractors have to do the job work with their own employees in their premises and supply only the finished goods to the appellant herein and therefore, the employees of independent contractors could not be held to be the employees of the appellant as their principal employer for the purpose of payment of contribution under the E.S.I. Act.

12. When this Court had already decided that the appellant company had employed independent contractors, who have to do the job work with their own employees in their premises and supply only the finished goods to the appellant and when the appellant do not conform to such specifications or quality will not amount to supervision or control over the employees of the independent contractors.

13. Since this court had already decided that the employees of independent contractors could not be held to be the employees of the appellant as their principal employer for the purpose of payment of contribution under the E.S.I. Act, if the authority is taking a different view, then, it is for them to establish that the employees of the contractors are also the employees of the appellant.

14. The judgment passed in C.M.A.No.3136 of 2010, dated 12.11.2013 squarely applies to the facts and circumstances of the present case.

15. In these circumstances, the order passed by the Employees State Insurance Court (Principal Labour Court), Chennai in E.S.I. O.P.No. 91 of 2001 as well as the order passed by the 1st respondent dated 29.07.1001 under section 45-A of the E.S.I. Act are liable to be set aside. Accordingly, the same are set aside. The Civil Miscellaneous Appeal is

allowed. No costs. Consequently, connected Miscellaneous
Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

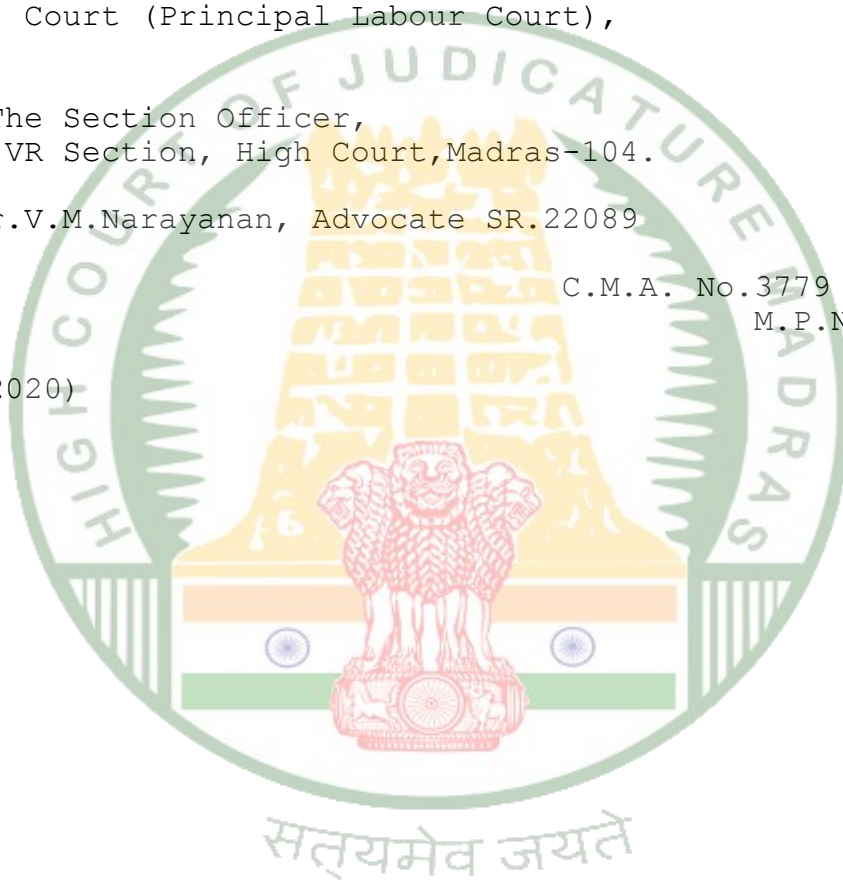
The E.S.I. Court (Principal Labour Court),
Chennai.

Copy to: The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.V.M.Narayanan, Advocate SR.22089

C.M.A. No.3779 of 2013 and
M.P.No.1 of 2013

SSV(CO)
CB(18/06/2020)



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