

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.1290, 1291 & 1292 of 2018 and
C.M.P.Nos.10301, 10302 & 10303 of 2018

M/s.New Carrying Corporation,
Rep by its Partner,
Ashok Kumar Chindalia,
No.41, Armenian Street,
Chennai 600 001. Appellant in all C.M.As

Vs.

1.Employees State Insurance Corporation,
Rep by its Deputy Director,
Panchdeepbhavan,
Sterling Road, Chennai 600 034.

2.The Recovery Officer,
Employees State Insurance Corporation,
Panchdeepbhavan,
Sterling Road, Chennai 600 034.

.... Respondents in all C.M.As

Prayer in all C.M.As: Civil Miscellaneous Appeals filed under
Section 82(2) of the Employees' State Insurance Act, to set
aside the order and decree of the Employees State Insurance
Court (Principal Labour Court) Chennai, dated 16.12.2016 in
E.I.O.P.Nos.33, 34 & 35 of 2004.

In all C.M.As

For Appellant : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondents : Mr.S.P.Srinivasan

C O M M O N J U D G M E N T

This civil miscellaneous appeal is filed to set aside the
order and decree of the Employees State Insurance Court
(Principal Labour Court) Chennai, dated 16.12.2016 in
E.I.O.P.Nos.33, 34 & 35 of 2004.

2. The learned counsel appearing on behalf of the appellant mainly contended that the different establishments were considered as a single establishment by ESI authorities, is improper. Though the appellant claims that these are all the branches functioning at Delhi, they are to be construed as different establishments.

3. The learned counsel for the appellant reiterated that the coverable employees as defined under the ESI Act, were not considered by the respondent ESI authorities and they have committed a mistake in determining the contribution payable within the provisions of the Act. At the outset, it is contended that many employees were drawing more than a sum of Rs.3500/- as a monthly salary. Those employees are non coverable employees within the definition of the Act. Without considering these aspects, the ESI authorities passed an order under Section 45(A) of the Act and therefore, the Labour Court also not considered these aspects and confirmed the order. Thus, the appellant is constrained to file the present appeal. Once the salary of the employees are exceeding the ceiling, they are to be considered as non coverable employees within the definition of the Act and the vital factors in this regard are not considered either by the authorities or by the ESI Court. Thus, the appeal is to be allowed.

4. The learned counsel appearing on behalf of the ESI Corporation objected the said contention by stating that the establishment is one and the same. The branches are to be construed as the same establishment and in the present case, the branch office in Delhi is taken as an establishment attached to the appellant Corporation and therefore, there is no infirmity as such. As far as the coverable employees are concerned, the appellant Corporation itself conceded the fact in their amended claim petition filed under Clause (g) Sub Section (1) of Section 75 of the E.S.I. Act in April 2020.

5. The learned counsel for the respondent solicited the attention of this Court with reference to the pleadings made in paragraph No.2 of the same order which reads as under:

"2. I submit that my Concern is an 'Establishment', engaged in the Business of Transportation of Cargo employed with a minimum of 7 and maximum of 15 employees during 4/95 to 3 which the employees strength vary from time to time.

The salary of an employee is between Rs.2,000/- to Rs.2,500/-. The establishment was not carrying any manufacturing process or used 'POWER'."

6. In view of the said statement made, the learned counsel for the appellant is now turned around and claim that some of the employees are non coverable employees and therefore, the judgment impugned is liable to be set aside.

7. Considering the arguments, this Court is of the opinion that the branch of an establishment is to be construed as attached with the main establishment. In the present case, the Delhi Unit is the branch office of the appellant Corporation. Therefore, the authorities have rightly held that the branch office at Delhi is also an establishment of the appellant Corporation and accordingly, the number of employees are to be calculated. Further regarding the coverable employees, the pleading of the appellant itself reveals that the salary of an employee is Rs.2000/- to Rs.2500/-. When such statement is made in the petition filed before the Labour Court, then, it is to be construed that all the employees were being paid between Rs.2000/- to Rs.2500/- and therefore, all are coverable employees within the definition of the ESI Act and the ESI Court also considered these facts and made a finding in paragraph No.8 of the judgment, which reads as under:

"8. As I have already stated, the statement of wages paid to the workers handed over by the petitioner itself shows that 22 persons worked for it in 1995 and I have already concluded that the coverage of the petitioner under the ESI Act based on their statement is correct. Therefore, under the ESI General Regulations, it is the responsibility of the petitioner to submit form No.01 and it also becomes the responsibility of the petitioner to inform the respondent of any changes in the number of workers. In the present case, the petitioner has not produced any evidence to show that it gave such information to the respondent. The petitioner has not claimed that it produced attendance registers and wage registers for inspection. Even in this Court, the petitioner has not produced those registers to show that it had less number of workers than the required number of workers. Having record to these facts, I am of the opinion that the respondent correctly determined the contribution for the claim period based on the statement already produced by the petitioner. These issues are answered accordingly."

8. In view of the facts and circumstances, this Court does not find any perversity or infirmity in respect of the findings arrived by the ESI Court.

9. Thus, the judgment and decree dated dated 16.12.2016 in E.I.O.P.Nos.33, 34 & 35 of 2004, stand confirmed and consequently, C.M.A.Nos.1290, 1291 & 1292 of 2018 stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gsk

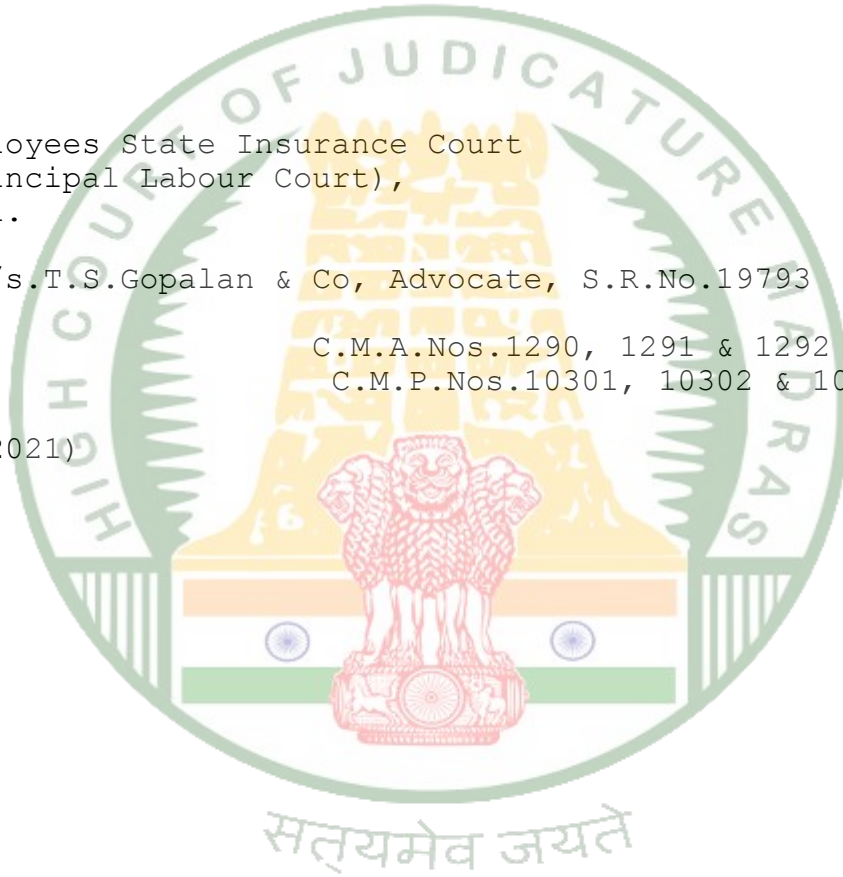
To

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

+3cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.19793

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C.M.P.Nos.10301, 10302 & 10303 of 2018

CP(CO)
CB(18/06/2021)



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