

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1527 OF 2018

The Employees State Insurance Corporation,
Rep. By its Deputy Regional Director,
Coimbatore.

.. Appellant

Vs

M/s.Jay Jay Mills (India) Private Limited,
No.10, K.V.P.Layout, Alangadu,
Karuvampalayam, Tirupur - 641 604.
Rep. By its Managing Director,
Shri. B.Jaichand

.. Respondent

Prayer:-

Appeal filed under Section 82 of the Employees Insurance Act, 1948 against the order dated 26.12.2017 in E.I.O.P.No. 1 of 2012 on the file of Employees Insurance Court (Principal Labour Court), Coimbatore.

For Appellant : Mr.SP.Srinivasan

For Respondents: Mr.S.Ravindran, Sr. Counsel
for Mr.S.Bazeer Ahamed

JUDGMENT

The order dated 26.12.2017 passed in E.I.O.P.No.1 of 2012 is under challenge in the present civil miscellaneous appeal.

2. The substantial questions of law raised by the appellant ESI Corporation read as under:

"(a) Whether the employees engaged by the Respondent under various head fall within the definition of "employees" as defined under Section 2(9) of the ESI Act and whether the payments made to the said employees and

independent establishment fall within the definition of "wages" under Section 2(22) of the ESI Act?

(b) Whether the Hon'ble EI Court is justified in setting aside the impugned order passed under Section 45A of the ESI Act dated 24.01.2012 on the premise of absence of documentary evidence produced by the Appellant herein before the Hon'ble EI Court, when the Respondent have not produced the contract agreement and other necessary documents to prove independent work, absence of supervision and control, no relationship of master and Servant, and when there is necessity for their services and it forms part of the manufacturing process?

(c) Whether the Hon'ble Court is justified is placing the burden on the Appellant, when the Respondent has approached the Court and also challenged the Section 45A Order which was passed in accordance with the ESI Act?"

3. The questions of law raised are merely relatable to the facts and circumstances which were already adjudicated by the ESI Court.

4. Beyond the questions of law raised, the learned Senior Counsel appearing on behalf of the respondent brought to the notice of this Court that the order passed by the Deputy Director under Section 45-A of the ESI Act itself is untenable in view of the proviso to clause 2 of Section 45-A of the Act. The proviso clause was inserted by the Employees' State Insurance (Amendment) Act, 2010 (18 of 2008) (w.e.f 16.01.2010). As per the said amendment, no such order under Section 45-A of the Act shall be passed by the Employees' State Insurance Corporation in respect of the period of five years from the date on which the contribution has become payable. Admittedly, in the present case, the contribution payable is for the years 2000-2001. Till the date of amendment, admittedly, no order has been passed under Section 45-A of the ESI Act. The order was passed by the authority in the proceedings dated 24.01.2012 after the amendment came into force and, therefore, the order itself is untenable and barred by the period of limitation.

5. Beyond the ground regarding the limitation raised, even on merits, those employees, against whom the contributions are sought to be recovered, were engaged by the contractors as per the claim of the appellant/company. The ESI Court considered the

factual aspects also and found that:

"1.The persons engaged by the job order/outside independent establishment were not employees of the respondent and the charges paid to these outside independent establishments do not constitute wages.

2.The outside job work units engaged by the respondent could not be termed as contractors but in fact they were independent employers.

3.The respondent failed to discharge its burden by leading evidence in support of its contention that the employees of outside 3rd party establishments were indirectly employed by the respondent.

4.There was no proof that respondent exercised effective supervision over the workers of the independent contractors by giving spot instructions."

6. However, this Court is of the considered opinion that the appellant has not raised any acceptable substantial question of law warranting further adjudication with reference to the issues regarding the questions of law. Even the facts and circumstances were well considered by the ESI Court and the findings are arrived.

7. Thus, this Court is of the opinion that no perversity or infirmity as such in respect of the order passed by the ESI Court and, accordingly, the order dated 26.12.2017 passed in E.I.O.P.No.1 of 2012 stands confirmed and the civil miscellaneous appeal stands dismissed. No costs. Consequently, connected C.M.P.No.12172 of 2018 is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

ssm

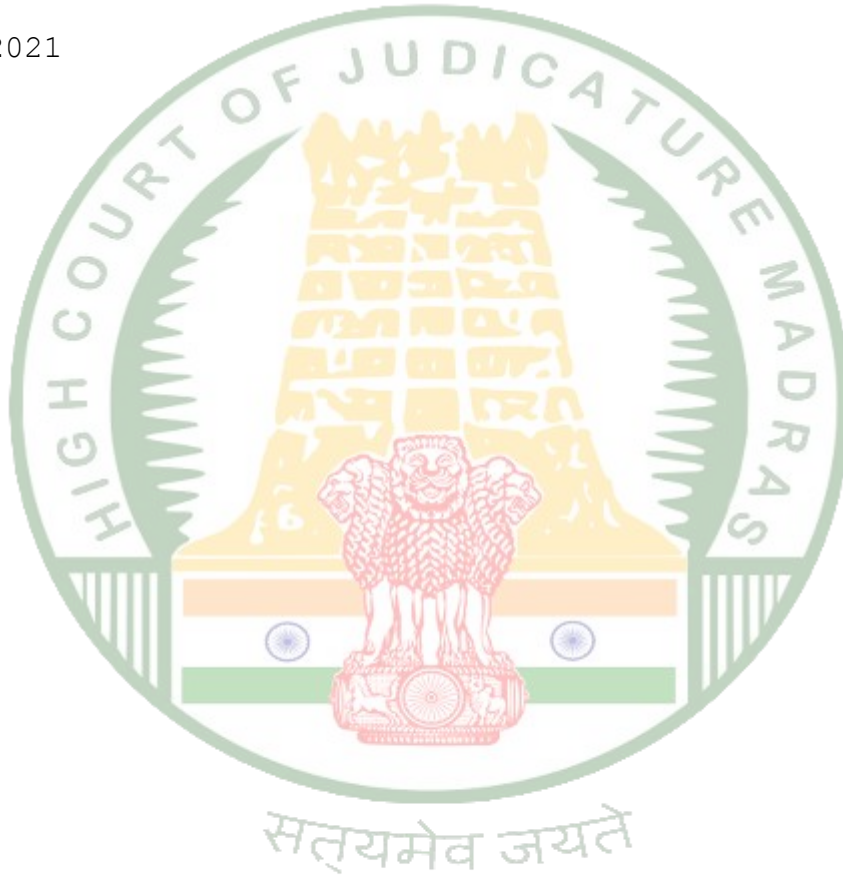
To

The Presiding Officer,
Principal Labour Court,
(Employees Insurance Court)
Coimbatore.

+1cc to Mr.SP.Srinivasan, Advocate, S.R.No.13120

C.M.A.No.1527 of 2018

KV (CO)
CS/16/03/2021



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