IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3363 of 2017
and
C.M.P.No.21329 of 2017

M/s.Premnath Enterprises,
Rep. by its partner,
225, SIDCO Indl.Estate,
Ambattur,
Chennai-600 098. .. Appellant/Petitioner

Vs.

1. Employee's State Insurance Corporation,
   Rep. by its Dy.Regional Director,
   143, Sterling Road,
   Chennai-600 098.

2. M/s.RB Engineerings

3. M/s.DSK Industries,

4. M/s.Sivam Phospating

5. M/s.Sri vinayaga Engineerings

6. M/s.Bala Industries

7. M/s.New Sterling Metal Industries

8. M/s.Sri Kanagadurga Industries

9. M/s.Thomas Phospating

10. M/s.Sri Ganapathy Electroplaters

11. M/s.Sri Rajeswari Engineerings

12. M/s.LM Industries

13. M/s.Sun Precision Tools

14. M/s.Bikric Industries

15. M/s.Vaishuv Kemikals Pvt. Ltd,

16. M/s.Machine crafts Industries

17. M/s.AMM Industries .. Respondents

(Respondents 2 to 17 are suo moto impleaded as partly respondents vide Court order dated 13.03.2018 made in CMA No.3363 of 2017 (NKKJ)

PRAYER : Civil Miscellaneous Appeal is filed under Section 82 of Employee's State Insurance Act, to set aside the order dated 23.08.2017 passed by the Employees Insurance Court (Principal Labour Court), Chennai in E.I.O.P.NO.36 of 2007 confirmed the order of the Respondent Ref:TN/Ins.I/51-57099-67/8345 dated 01.02.2007.

For Appellant : Mr.Sai Raaj Asso

For Respondent : Mr.S.P.Srinivasan

J U D G M E N T

The appellant herein is the petitioner, who filed E.I.O.P.NO.36 of 2007 on the file of the Employees Insurance Court (Principal Labour Court), Chennai, to declare that the order Ref:TN/Ins.I/51-57099-67/8345 dated 01.02.2007 passed by the respondent Corporation claiming contribution insofar as it related to "Labour Charges" and not maintainable in law and that the petitioner is not liable to pay any contribution with regard to the claim made by the respondent Corporation. The ESI Corporation also contested the said petition and on merits. Aggrieved by that he preferred this appeal.

2. Point for consideration:

Whether the trial Judge without appreciating the fact that jobs are being done outside the factory of the appellant and also not supervised by them, erroneously confirmed the order passed by the respondent under Section 45 A of the ESI Act?

3. The petitioner's factory namely M/s.Premnath Enterprises is manufacturing machinery components and covered under the ESI Act. After due inspection made by the Inspectors of the ESI Corporation, the petitioner was directed to pay the contribution under Section 45-A of the ESI Corporation Act, particularly, the claim under labour charges which comes to Rs.1,43,684/-. The petitioner paid the other contributions

passed under the impugned order except the labour charges. The petitioner contended that the labour charges relates only to the work done outside the factory without any control or supervision by the petitioner's personnel that many of the outside contractors pay to their employees and that the labour charges paid by the petitioner is not exclusively the wages paid to the workmen but also the other expenses met by the contractors such as infrastructure costs etc.

4. Based upon these facts, the appellants submits that the labour charges relates only to the work done outside the factory without any control or supervisor to the petitioner's personnel. Therefore, they need not pay contribution insofar as it relates to the labour charges. But the ESI Corporation without appreciating this fact as well as the record submitted on their side erroneously claimed contribution for labour charges, the same also confirmed by the Tribunal, which is contrary to law. Hence, the learned counsel for the appellant prayed to allow this appeal.

5. By way of reply, the learned counsel for ESI Corporation submits that the factory is covered under provisions of ESI Act. During the investigation on 06.10.2005 by the Inspector of the respondent Corporation and on verifying the ledgers relating to the period from 2002-2003 and 2003-2004, it was observed that the petitioner has failed to pay contribution of various heads namely accounting charges, professional fee, repairs and maintenance, transport and cartage and labour charges.

6. Based upon the inspection report, the authorized officer issued show cause notice to the petitioner calling for personal appearance with relevant documents. The petitioner's representative attended the personal hearing on 05.01.2006 and sought time to produce records and they produced bills and vouchers. Based on the same, the officer directed the appellant to pay contribution of Rs.1,52,619/- for the period of 2002-2004. The appellant paid the other contribution except the contribution for labour charges.

7. The learned counsel for the Corporation submits that the record submitted with voucher bills on the side of the appellant were verified and also convinced that certain contribution were exempted like transport wages. Under other heads the appellant also paid the contribution, but with regard to the labour charges ie., Rs.1,43,684/-, the contribution for the period 2002-2004 was payable by the petitioner.

8. According to the respondents, the bill and voucher and the records submitted by the petitioner reveals that the

labour charges were paid to the workers through immediate employer/appellant. So, as per Section 2(9) of the Act, the labour charges paid to them are wages as per Section 2 (22) of the Act.

9. The foremost objection raised by the petitioner is that they entrusted manufacturing work to the outside contractors, which are not supervised by the appellant but paid the labour charges which relates to material cost and labour cost incurred by the vendors. Even assuming that the petitioner was not doing the supervising work, they paid the labour cost to the labourers from the same also inferred from their bills and voucher, which are produced for the verification in which material cost and labour charges are mentioned separately. So the immediate employer/appellant paid the labour charges to the outside parties for the work done by them outside factory premises. Therefore, the objection raised by the appellant that they are not liable to pay the contribution to hand over the work to the 3rd party contractors and the same was done outside the premises is unsustainable. Moreover, the records reveals that they paid the outside labourers. So as an immediate principal employer under section 2 (22) of the Act and the labour wages amount paid by them comes under the category of wages. This fact was rightly viewed by the Tribunal and hence the order of the Tribunal, calls for no interference by this Court. Accordingly, the question of law is answered. During the pendency of the Civil Miscellaneous Appeal, this Court ordered to implead the outside contractors as party to the proceedings.

10. On considering the entire case of the facts, those outside contractors are need not to be impleaded for the reason that their own records submitted by the appellant proved that they paid the labour charges to the outside labourers, which amounts to wages.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed, and the order of the Employees Insurance Court/Principal Labour Court, Chennai is confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Employee's State Insurance Corporation,
   Rep. by its Dy.Regional Director,
   143, Sterling Road,
   Chennai-600 098.

2. The Employees Insurance Court (Principal Labour Court),
   Chennai.

+1cc to Mr.Sai Raaj Asso , Advocate, S.R.No.20837
+1cc to Mr.S.P.Srinivasan, Advocate, S.R.No.21503

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and
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AK-II(CO)
HS(30/07/2021)