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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 05th October, 2021

+ **FAO 231/2021& CM APPLN. 34942-43/2021**

**M/S BRAHAMPUTRA CARGO
CARRIERS PVT LTD**

..... Appellant

versus

UNION OF INDIA AND ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Dr. Rajiv Nanda and Manish Kumar Vikkey, Advocates

For the Respondents: Mr. Ripudaman Bhardwaj, CGSC with Kushagra Kumar,
Advocate for R-1/UOI

Mr. Shlok Chandra, Advocate for R-2 to 5 (through VC)

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

CM APPLN. 34944/2021 (Exemption)

Allowed, subject to all just exceptions

FAO 231/2021

1. Appellant impugns judgment dated 14.09.2020, whereby the petition filed by the appellant, under Section 75 of the Employees State Insurance Act (ESI Act) seeking setting aside of order dated 22.02.2017 and order dated 03.04.2017 has been dismissed.

2. As per the appellant an inspection was carried out at the premises of

FAO 231/2021

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to HMJ Sanjeev Sachdeva.

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the petitioner and it was noted in the inspection report that appellant failed to produce certain record based on which a demand of Rs. 1,32,27,414/- was raised on 01.12.2016. Consequent thereto a show cause notice dated 01.12.2016 was issued which was responded to, however, the same culminated in an order which was challenged by the subject petition under Section 75 of the ESI Act.

3. Learned Counsel for the petitioner *inter-alia* submits that both the Commissioner as well as the ESI Court has erred in not appreciating that the so-called lorry drivers and the owners were not the employees of the petitioner but there was a principle to principle contract with them.

4. He further submits that the impugned order erroneously records that the petitioner has not produced any document as all the documents which were tendered in evidence of the witness produced by the petitioner were de-exhibited at the time of recording of the statement of the witness of the petitioner on 24.01.2019 on the ground that original documents have not been produced.

5. Learned counsel points out that subsequently an application was filed to exhibit the said documents and original documents were produced, which application was allowed on 20.02.2019 and the documents were exhibited as Exb. PW1/2 to Exb. PW1/7 and the Court has recorded that the originals were seen and returned.

6. He submits that at the time of pronouncing the impugned judgment, it appears that ESI Court on account of oversight did not notice this order

and has erred in holding that no documentary evidence was produced by the petitioner in support of its claim.

7. Issue notice. Notice is accepted by learned counsel appearing for respondent no. 1 as also by counsel for respondent no. 2 to 5.

8. Learned counsel appearing for respondent no. 2 to 5 disputes that the order on merits is erroneous. He submits that the appellant has failed to produce the requisite material in support of his claim. He, however, fairly concedes that the documents which were subsequently exhibited seems to have been missed out by the ESI Court at the time of passing of the impugned judgment.

9. Without getting into the controversy of merits, it is quite clear that the impugned order erroneously records that the appellant has not produce any documentary evidence. In paragraph 7, the impugned order records that appellant has only proved one document and all documents have been de-exhibited. Further in paragraph 14 of the impugned order, the Court records that appellant has not produced any documentary evidence and all documents have remained unproved since these documents were de-exhibited.

10. The ESI Court has clearly erred in not noticing its subsequent order dated 20.02.2019 where all documents were once again exhibited.

11. In view of the above, I am of the view that the impugned order cannot be sustained on the said ground and calls for a remit to the ESI

Court to consider the case of the appellant afresh by also taking into account the documents which were subsequently exhibited.

12. In view of the above, impugned order dated 14.09.2020 is set aside. The matter is remitted to the ESI Court for passing a fresh order on merit after giving an opportunity of hearing to the parties.

13. The appeal is allowed in the above terms.

14. It is pointed out by learned counsel for the appellant that during the pendency of the proceedings the before ESI Court there was interim protection granted to the appellant by order dated 25.11.2017.

15. It is accordingly further directed that during the pendency of the proceedings before the ESI Court, the interim protection granted to the appellant, by order dated 25.11.2017, shall continue to operate till disposal of the proceedings.

16. ESI Court shall further endeavour to dispose of the proceedings expeditiously. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

OCTOBER 5, 2021
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