IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.285 of 2022
&
C.M.P.No.1925 of 2022

M/s.S.G.Garments
S.F.No.707/B/2/B4
Dharapuram Road,
Opp. M.P. Petrol Bunk,
Tiruppur - 641 608
Represented by its Partner
Mr.K.P.Sivasubramaniam ...Appellant/Petitioner

Vs

1.The Deputy Director,
The Employee's State Insurance Corporation,
Sub Regional Office
No. 1897, Trichy Road, Ramanathapuram,
Coimbatore - 641 045.

2.The Recovery Officer,
The Employee's State Insurance Corporation
Sub Regional Office
No.1897, Trichy Road, Ramanathapuram,
Coimbatore - 641 045. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 82 of the Employee's State Insurance Act, 1982 against the order dated 22.02.2021 passed in ESIOP.No.6 of 2018 on the file of the Employees State Insurance Court (Principal Labour Court), Coimbatore.

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| For Appellant | : | Mr.C.Manohar Gupta |
| For Respondents | : | Mr.T.N.C.Kaushik |

JUDGEMENT

The appellant management is the appellant before this Court. They seek to challenge the order passed by the Employees State Insurance Court, Coimbatore in E.S.I.O.P.No.6 of 2018 dated 22.02.2022. The facts in brief are as follows.

2. The appellant company is engaged in manufacturing and exporting garments. They were issued with Form C-18 Show Cause Notice dated 31.10.2016 calling upon them to pay a contribution of a sum of Rs.6,43,500/- for the period 01.04.2013 to 31.07.2016. The said contribution was stated to be in respect of 30 employees for a period of 40 months for a wage of Rs.8,250/-. They were directed to pay a sum of Rs.6,43,500/- which constituted contribution.

3. This notice was not replied to by the appellant. Thereafter, the 1st respondent had passed an order under Section 45 A of the Employee's State Insurance Act, herein after for the sake of brevity referred to as the ESI Act, directing the appellant to pay a sum of Rs.6,43,500/- for the period 01.04.2013 to 31.07.2016.

4. The said order was taken up on appeal by the appellant under Section 45 AA of the ESI Act and the main ground of challenge was that they had not received notice from the 1st respondent. The appellate authority by order dated 18.04.2017 remitted the matter back for fresh assessment.

5. After the remand, the 1st respondent had passed the revised order dated 21.06.2017, which was an order passed after hearing the appellant herein. The records were also produced for verification and ultimately the 1st respondent had held as follows:

> "However, considering the fact that the employer has not engaged any employees directly and paid any wages and the job work was undertaken through contractor / immediate employer the payment made to the contractor/immediate employer, and the expenditure incurred towards the incidental charges for arranging labour force material cost, transportation etc and also considering the reasonable margin to the contractor/immediate employer is entitled for, I consider 60% of the total amount paid to the immediate employer/contractor as wages payable to coverable employees and arrive at the contribution on that amount as payable by the Principal Employer to the Corporation.
>
> Therefore the wages on outside job work units paid works out to Rs.4642373.40 and contribution @ 6.5% on the above amount works out to Rs.301755/-
>
> So the total contribution payable is determined as Rs. 127625.00 + Rs.301755/- = Rs.429380/- for the

period from 01.04.2013 to 31.03.2016. The assessment of contribution made is fair reasonable, legal and according to law.

6. This order was challenged by the appellant before the Employees State Insurance Court, Coimbatore in E.S.I.O.P.No.6 of 2018. By order dated 22.02.2021, the learned Judge had dismissed the petition.

7. Challenging the said order, the appellant management is before this Court.

8. Mr.Manohar Gupta, appearing on behalf of the appellant would submit that in the show cause notice dated 31.10.2016, the 1st respondent had levied a sum of Rs.6,43,500/- as contribution payable for a period of 40 months in respect of 30 employees for the period April 2013 to July 2016. Further, in the order under Section 45A of the ESI Act dated 30.01.2017 the 1st respondent had determined the contribution of a sum of Rs.6,43,500/- and the appellant was directed to pay the said amount within a period of 60 days from the date of receipt of a copy of the order.

9. The learned counsel would submit that this order was taken up on appeal since no notice had been issued to the appellant and the appellate authority by order dated 18.04.2017 was pleased to remand the matter back to the 1st respondent. However, after remand and on perusing the records produced by the appellant the 1st respondent had observed that the employer / appellant had not engaged any employees directly and had only undertaken a job works through the contractor.

10. However, despite making such an observation the 1st respondent has proceeded to state that 60% of the total amount paid to the contractor as wages to the coverable employees would be taken into account for arriving at contribution. The 1st respondent after considering that a sum of Rs.46,42,373.40/- had been paid for outside job work, had taken 6.5% of the above amount as contribution which worked out to a sum of Rs.3,01,755/- and to that the contribution on the wages paid by the appellant to their employees was taken to be a sum of Rs.1,27,625/- Therefore, the 1st respondent had directed the appellant to pay a sum of Rs.4,29,380/-.

11. The learned counsel would therefore submit that the very order is erroneous since the appellant has been directed to pay contribution for persons who are the direct employees of the

contractor and on whom the appellant has no direct supervision or control. He would submit that this factor has not at all been considered by the Principal Labour Court, Coimbatore.



12. The learned counsel would submit that the learned Judge has only proceeded to consider the argument of the appellant with reference to the competence of the Director who had passed an order under Section 45 AA of the ESI Act. The learned counsel would submit that the 1st respondent who had initially said that the appellant had 30 employees had thereafter in the order after the remand has held that the majority of the work has been executed through job works.

13. The learned counsel would rely on the Judgement of the Full Bench of this Court reported in 2007 (4) CTC 529 - ESI Corporation, Madras Vs. Bethall Engineering Company in support of his argument that the workman of the third parties cannot be treated as the workman of the Principal Employer unless there was a direct supervision over all these employees.

14. The learned counsel would further argue that the Director who had passed the order under Section 45 AA was not the competent authority and therefore the very remand order itself is erroneous and the order of the 1st respondent after the remand therefore becomes non-est.

15. Per contra Mr.T.N.C.Kaushik, learned counsel appearing on behalf of the respondents would submit that the order under Section 45 AA has been passed by the competent authority. He would invite the Court's attention to regulation 31 D of the Employees State Insurance (General) Regulations, 1950, which sets out the details of the appellate authority. As per this regulation the appellate authority under Section 45 AA of the Act is the Insurance Commissioner, the Additional Commissioner, Regional Director and Joint Director.

16. The learned counsel would also produce Office Order No.95 / 2014 dated 22.08.2014 issued by the Deputy Director, E-I, Headquarters, stating that Mr.C.V.Joseph who was the Regional Director Gr. A (Adhoc) was being promoted to the Regional Director Gr. A. He would therefore submit that Mr.C.V.Joseph who had passed the order under Section 45 AA was a competent authority as contemplated under Regulation 31 D of the Regulation.

17. As regards the first argument with reference to the order of the 1st respondent directing the appellant to pay

contribution for workmen of the contractor, the learned counsel would submit that these workmen were under the direct supervision of the appellant and therefore that coupled with the records that were submitted by the appellant, the 1st respondent has rightly held that the appellant was liable to pay the contribution and this has been upheld by the Principal Labour Judge, Coimbatore.

18. Heard the learned counsel and perused the records.

19. The first argument by the appellant with reference to the locus standi of the authority who had passed order under Section 45 AA of the ESI Act, the same has to be rejected in the light of the Regulation 31 D and the office order produced by the learned counsel for the respondent dated 22.08.2014.

20. With regard to the primary argument as to whether the appellant was liable to pay contribution for the workman of the contractor, a perusal of the order impugned clearly shows that the learned Judge has not addressed these issues.

21. Therefore, by finding the first point in favour of the respondent Corporation and taking into consideration the absence of discussion or reasoning with reference to the direction to pay contribution, the matter is remitted back to the Principal Labour Court, Coimbatore for considering the issues as to the liability of the appellant to pay contribution for the employees of the contractor. The Principal Labour Judge, Coimbatore shall proceed to dispose of the same after hearing both the parties and permitting them to let in evidence if so requested within a period of four months from the date of receipt of a copy of this order.

22. The Civil Miscellaneous Appeal is allowed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Employees State Insurance Court
(Principal Labour Court),
Coimbatore

+1 CC to Mr.T.N.C.Kaushik, advocate sr 26114
+1 CC to M/s. Gupta & Ravi, advocate sr 26245.

C.M.A.No.285 of 2022

SMI(CO)
SP(10/06/2022)