IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

Civil Miscellaneous Appeal No.1983 of 2021
and
Civil Miscellaneous Petition No.10702 of 2021

SMPC Industries India Pvt. Ltd.,
Represented by its Director Md. Salaieh
Karumbukuppam Village,
Gummidipoondi – 601 201. .. Appellant

Versus

1. Deputy Director
   Employees State Insurance Corporation
   143, Sterling Road
   Chennai – 600 034.

2. Recovery Officer
   Employees State Insurance Corporation
   143, Sterling Road
   Chennai – 600 034. .. Respondents

Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Corporation Act, against the Order dated 16.02.2021 made in E.I.O.P. No. 28 of 2015 on the file of the Employees State Insurance Court, Principal Labour Court, Chennai.

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

For R1 & R2 : M/s. S. Jayakumari,
Standing Counsel

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant aggrieved over the Order passed in E.I.O.P. No. 28 of 2020, dated 16.02.2021, on the file of the Employees State Insurance Court, Principal Labour Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The appellant company was inspected by the Competent Authority, Social Security Officer of ESI and submitted a Report dated 27.02.2014. Based on the Inspection Report, the appellant was served with Form-C18 - Adhoc Notice, dated 20.05.2014 demanding production of documents and to participate in an enquiry. On the date of enquiry, the appellant did not appear and therefore, based on the available records, the first respondent has passed an Order under Section 45-A of the Employees State

Insurance Compensation Act, to calling upon the appellant to pay a sum of Rs.3,59,304/- as contribution for the omitted wages for the period from 01.04.2010 to 31.03.2011.

4. Aggrieved over the Order passed by the first respondent, the appellant has approached the ESI Court to set aside the Order of the first respondent, wherein, the original records have been produced more particularly, Ex.R1, which is the Inspection Report. The Inspection Report shows that the officer has conducted inspection more particularly, the salary account and omitted wages under 15 indexes and directed to pay additional contribution for a sum of Rs.47,760/-. Contrary to the above Report, the first respondent has issued Adhoc Notice-Ex.P18 under the only one head "Omitted wages capital work in progress" of Rs.3,59,304/- as contribution payable for addition to capital work in progress at the rate of 6.5% of Rs.55,27,752/-. Subsequently, Section 45-A Order was also passed, demanding the contribution as stated in the Form-C18.

5. Mr. S. Haroon, learned counsel for the appellant has submitted that the Order passed under Section 45-A is an ex-parte Order. The appellant company was unable to appear on the day fixed for enquiry. Instead of

adjourning the enquiry proceedings, an order has been passed even in the absence of any application filed under Section 45-A. Therefore, the learned counsel prayed for allowing this appeal.

6. M/s. S. Jayakumari, learned Standing Counsel has submitted that based on the Inspection Report, Adhoc Notice under Section Form-C18 has been issued. Since the appellant has not come forward to produce any documents or records, the authority has no other option except to pass an Order under Section 45-A. The learned counsel has also admitted that the entire proceedings were initiated based on the Inspection Report, dated 20.07.2014 and therefore, the order passed is in accordance with law.

7. Heard the learned counsel for the appellant as well as the learned Standing counsel for the respondents/ESI. The Inspection Report shows that the officer has noted the omitted wages under the following heads:

1.Salary Account
2.Machinery Maintenance
3.Factory Maintenance
4.Repairs of Maintenance
5.Office Maintenance
6.Factory Building – Addition
7.Furniture & Fixtures – Addition
8.Plant & Machinery – Addition
9.Repairs & Maintenance
10.Crane Hire

11.Repair & Maintenance – Electrical
12.Printing & Stationary
13.Security Charges
14.Contract Wages
15.Capital Work in Progress

8. The noted difference of contribution to be made from 14th head. The 15th head is the capital work in progress wherein, it is stated that an amount of Rs.1,12,41,581/- was entered as opening balance as on 01.04.2010 with addition shown as Rs.55,27,752/- and closing balance as on 31.03.2011 was shown as Rs.67,69,332/- without showing depreciation amount. Accordingly, it was stated that the total ESI contribution payable for the year 2010 - 2011 is Rs.41,760/- .

9. Before the ESI Court, the appellant had produced the details of expenses of the capital work for the periods from 17.10.2008 to 15.11.2010 in which, the major portion of amount involves in the bill for purchase of the machinery and also for purchase of server. The machinery purchased from one Toshi Engineering Works which is termed as addition and value has been fixed as Rs.39,00,000/-. The purchase of computer server as Rs.1,32,182/- . These invoices have been produced before the ESI Court and the ESI Court has considered the above documents and held in Paragraph Nos.8 and 9 as follows:

*"8. To prove the case of the petitioner, the show*

*cause notice issued on 20.09.2014, the 45A order issued on 09.07.2014 and the balance sheet were marked as Exs.P1, P2 and P10. On the other hand, the Inspection Report, refused show cause notice, 45A order and acknowledgement card all were marked as Exs.R1 to R5. The question to be decided in this case is, whether the 9 Heads mentioned in the show cause notice as well as in the 45A order issued by the respondent comprises the wages paid to the workers or purchase of the materials? The petitioner has filed the bills and vouchers are Exs.P3 to P9 to prove that the petitioner has purchased only materials, no wages has been paid. On perusal of Exs.P3 to P9 the materials said to be purchased under voucher and the bills on various dates. But the bills and the voucher do not tally with each other. The petitioner has filed some vouchers and bills which are not connected with each other. The petitioner is supposed to produce 9 purchase vouchers and 9 bills to prove that the 9 Heads mentioned in the impugned 45A order for only purchasing materials and not wages paid to the workers. But the invoice Ex.P4 and Ex.P7 are the invoice issued by the Toshi Engineering Works. For that there is no bills issued by the Toshi Engineering Works.*

*9. Moreover, the bank details from which the petitioner has paid the amount to the concerned seller also not filed and there is no whisper on the petitioner side that on which date and from which bank the amount was transacted to the seller. The payment shown in the balance sheet also did not tally with the bills and vouchers filed by the petitioner. There is no proof that the materials were purchased on credit and it was paid later. So in all modes of payment this Court is not able to tally with Exs.P3 to P9 to the Heads mentioned in the disputed order. Hence, this Court is not satisfied that the 9 Heads mentioned in the disputed order comprised only the purchase of materials. With these reasons the issues are answered".*

10. Ex.P4 is the Invoice for the purchase of machinery items from Toshi Engineering Works and the Bills for purchase of server was marked as Ex.P9. These two purchases have been entered into the Ledger Accounts which has been marked as Ex.P10 under the head 'Plant and machinery' and the other heads are concerned, they include the labour component incurred by the appellant. Since Ex.P4 and Ex.P9 have been supported by the ledger account – Ex.P10, I am of the view that the same ought to have been accepted by the ESI Court.

11. It is also the case of the appellant that at the time of inspection they were ready to produce all those documents but the Inspector instead of perusing all those documents, without giving opportunity to explain at the time of inspection, referred the matter to the first respondent. The first respondent without ascertaining the fact that no proper records have been produced for the additional capital account, has accepted the same. Now the appellant has proved this additional capital account is only with regard to two heads, which relates to purchase of machineries and the same could not be included under the head wages and no contribution could be claimed for the above two entries as omitted wages.

12. As far as the other heads are concerned, even though, some invoices and vouchers were marked as Exs.P5 to P8 which includes labour component, and these exhibits have not been properly appreciated. This Court is of the view that those entries required to be corroborated by adducing evidence to show that, no labour was involved in those transactions. Admittedly, no such evidence is produced to show those transactions have not involved labour. A circular has been produced before this Court, dated 28.05.2003, wherein, it has been ordered to impose 25% of capital expenditure to be construed as labour Component.

13. The Division Bench Judgment of this Court in ***Regional Director, Employees State Insurance Corporation, Madras vs. Sundaram Clayton, Ltd., Moppet Division (Registered Office), Madras [2004 (1) LLN 630,]*** held in paragraph No.14 that 25% total expenditure shall be construed as wages.

> *"14. With reference to the contribution of the labour charges, learned counsel for the appellant-Corporation relied on the decision of this Court in Management of Jawahar Mills, Ltd. v. Regional Director, Employees' State Insurance Corporation, [2001 (1) L.L.N. 3541, the unreported judgment in C.M.A. No. 1178/1990, dated 5 June, 2002, pronounced by one of us (K. Govindaran, J.) and another unreported judgment in C.M.A. No. 82/1991, dated 15 December, 1998, in*

> *support of his submission that if the accounts are not produced to find out the quantum of labour charges paid by them, 25 per cent of the total amount paid for construction; of the building has to be taken as labour charges. In all those judgments, the learned Judges have come to the conclusion that in the absence of any accounts and break-up figures for payment of wages to the workers engaged for the purpose of constructing buildings, the request of the respondent-Corporation therein to fix the same at 25 per cent was reasonable".*

14. The learned Standing Counsel has relied on the Judgment of this Court in ***C.M.A.No.1109 of 2022, dated 25.08.2023,*** wherein, it is held that if records were not produced by the employer then, 25% of material cost shall be taken as wages.

15. I have considered the above Judgments. The appellant has produced bills such as courier charges, assembling charges and cargo charges etc., marked as Ex.P5 to P8 and no evidence produced to show the exact quantum of labour charges. Under the said circumstances, this Court is of the view that payment of 25% on remaining heads i.e., after deducting Rs.40,32,152/- [Rs.39,00,000/- + Rs.1,32,152/-] from Rs.55,27,792/-, shall be treated as labour charges and accordingly applicable rate of contributious to be paid by appellant. If any amount is already paid by the appellant at the time of filing of appeal or any other proceedings connected herein, the same has to be

adjusted.

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

12.12.2023

ssi
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Principal Labour Judge,
Employees State Insurance Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

K.RAJASEKAR,J.,

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C.M.A.No.1983 of 2021

12.12.2023