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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2640 of 2023
and CMP.Nos.24398 & 24399 of 2023

M/s.Excelsior Plastics
Represented by its Proprietor
Mr.V.S.R.Prasad
No.28, III Phase, Industrial Estate
Guindy, Chennai - 600 032. ..... Appellant / Petitioner

Vs

1.Employees State Insurance Corporation
Rep by its Deputy Director
"Panchdeep Bhavan"
No.143, Sterling Road
Chennai - 600 034.

2.The Recovery Officer
Employees State Insurance Corporation
"Panchdeep Bhavan"
No.143, Sterling Road
Chennai - 600 034.

3.The Branch Manager
Indian Bank
Guindy Branch
PB No.3171, SIDCO Building
GST Road, Guindy, Chennai - 600 032. ..... Respondents / Respondents

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Prayer : Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948 praying to set aside the order of the Employees Insurance Court (Principal Labour Court), Chennai, dated 07.01.2023 in E.I.O.P.No.81 of 2008, award costs.

For Appellant : Mr.Balan Haridas

For Respondents : Ms.G.Narmadha
for Mr.G.Bharadwaj for R1 & R2

JUDGMENT

The appellant is an employer who was slapped with a demand for contribution of a sum of Rs.24,07,055/-, which as per the inspection report is paid towards outside job work. The tenability of this claim for contribution made by the Corporation under Section 45A of the Act, was challenged before the ESI Court in E.I.O.P.No.81/2008, and the proceedings of the Corporation came to be confirmed, vide an order of the Tribunal dated 07.01.2023. This is now under challenge.

2. The appellant /employer is a manufacturer of plastic covers. And it is not in dispute that he has been prompt and regular in paying the contribution for

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the employees that it has engaged. While so, on 31.03.2005 and 07.04.2005, the inspection was conducted by R.W.1, Santhalekshmi. In her report, she makes a candid statement that the employer had incurred Rs.24,07,055/- towards outside job, part of the raw materials supplied by the employer, other items that were purchased by the immediate employer, and hence, the Corporation can claim contribution even on job work. And R.W.1 proceeded to require the employer (the appellant herein) to segregate the labour charges to enable contributions for the employees actually employed. This she reiterates subsequently in the same order, and required the employer to produce necessary bills and vouchers to establish that it was paid, to ascertain the truth of the statement that it was actually paid only towards the job work. The show cause notice was promptly issued, and the appellant had responded to the same vide its reply dated 15.06.2005, wherein it denied that it had given any job work, and claimed a contribution of Rs.1,56,459/- by treating the entire sum of Rs.24,07,055/- as labour charges. This was under challenge before the ESI Court in EIOP.No.82/2008.

3. Before the Tribunal, both the appellant as well as the respondent adduced oral evidence. Before the Tribunal, the employer had produced Ext.P8, a

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print out of its ledger extract for the period covered under the inspection report 45A proceedings. For the respondent, it examined the inspector concerned as R.W.1 and another official as R.W.2.

4. The Ext.P8 reveals that the employer has paid several amounts on different dates, whose sum total would come to the aforesaid Rs.24,07,055/-, and each of these, are characterised in the ledger as amounts paid towards job work. However, this statement goes tangential to the very response of the employer to the show cause notice issued under Form-C18. Keeping this aspect aside, if the quality of oral testimonies provided by R.W.1 and R.W.2 are considered, they make a categorical statement that printing was done as a job work, and that it was done by a third party in its premises employing its own men.

5. The ESI Court however relied on the reply statement of the employer dated 15.06.2005 to the show cause notice, and upheld the approach of the ESI Corporation to treat the entire sum is liable for contribution. This is now under challenge.

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6. Heard both sides. While the learned counsel for the appellant relied heavily on the oral testimonies of R.W.1 and R.W.2 to build a case in favour of the employer, the learned counsel for the Corporation was prompt in relying on the aforesaid reply statement of the employer to the show cause notice. The learned counsel for the respondent further added that even in the inspection report, the R.W.1 had required the employer to provide such necessary particulars or materials to show the actual payment of printing charges to an outside agency. This was not done. And since the employer conceded that they were not job charges, the Corporation did not have an opportunity to probe into the matter further.

7. There are valid points on both sides. But in the reply notice Ext.P2, where both sides speak half truth. If the employer is confident that he had no supervisory control over the outside agency, which was entrusted with the responsibility to print on the plastic cover that it manufactures, then none prevented him from making a statement in Ext.P2. That was not done. But R.W.1, in particular is confident that printing is handed over to an outside agency. Now it is a question of placing half truths on either side to arrive at a conclusion.

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8. The only flaw is, this Court does not find how the Corporation was driven to conclude what it had concluded and so also the ESI Court. The only possible objection that can be taken is that they have treated the entire job work is liable for contribution, and when the job work charges are determined by multiple factors or inputs, necessarily, the total contribution amount has to be scaled down to 25%, and the contribution is liable to be paid on the said sum.

9. Accordingly, this appeal is partially allowed, and the appellant/employer is now required to pay contribution in terms of the Act, on 25% of Rs.24,07,055/-, and so calculated, the contribution payable will be Rs.40,739.60p, which is rounded off to Rs.40,740/-. The appellant is directed to pay the contribution amount herein determined to the EST Corporation, within four weeks from today. No costs. Consequently, connected miscellaneous petition is closed.

28.11.2023

Index : Yes / No
Speaking order / Non-speaking order
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Note : Issue order copy on 29.11.2023.

To:

1.The Presiding Officer
Employees Insurance Court
(Principal Labour Court)
Chennai.

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

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N.SESHASAYEE.J.,

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C.M.A.No.2640 of 2023

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