IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3292 of 2017
and
C.M.P.No.20768 of 2017

Bangalore Auto Diesel Works,
P.O.Box 409, Omalur Road,
Salem - 4.
Represented by P.Sugumar Partner ... Appellant / Petitioner

Vs.

1. The Regional Director,
   ESI Corporation,
   143, Sterling Road,
   Nungambakkam,
   Chennai - 600 034.

2. A.Kuppuraj ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948 to set aside the order passed by the Employees Insurance Court, Salem (Labour Court, Salem) in E.S.I.O.P.No.4 of 2007 dated 06.07.2017 and consequently, allow the same.

For Appellant	:	Mr.P.Ravishankar Rao for Mr.M.R.Raghavan
For Respondents	:	Mr.C.V.Ramachandramurthy for R1 No appearance for R2

J U D G M E N T

The present civil miscellaneous appeal has been filed against the order dated 06.07.2017 passed by the Presiding Officer, Labour Court, Salem in E.S.I.O.P.No.4 of 2007.

2. The brief facts as required for the disposal of the appeal is that the petitioner is covered under the provisions of the ESI Act and has been remitting the contributions regularly for all the eligible employees. While so, Form C-18 notice was issued by the first respondent claiming contributions for sale commission and tiffin expenses. The first respondent has also given a personal hearing wherein the petitioner's representative has given their explanation that the petitioner also paid contributions for Item Nos.1 to 7 in the C-18 notice but did not accept the liability with respect to the sale commission and tiffin expenses. The contention of the petitioner

before the first respondent was that the sale commission was paid to the mechanics only during the Deepavali seasons, once in a year for servicing of the pumps and therefore, it is not covered under the definition under wages as defined under Section 2(22) of the ESI Act. The concerned vouchers signed by the mechanics and the corresponding ledger entry with their names were shown to the respondents at the time of personal hearing. The petitioner also has contended that the same explanation vide reply dated 03.12.2003 for a similar C-18 notice dated 01.12.2003 for the period 2000-01, the respondents have accepted the explanation given. However for the current period, the same explanation was not accepted by the respondents.

3. As far as Item Nos.9 and 10 tiffin expenses were concerned, the petitioner contended that supplying tiffin and snacks to the employees while on duty and it varies everyday, it is not overtime wages paid to the employees individually and the amount is not paid in cash to any employees nor it is covered in the terms of employment. In spite of producing Section

45 A orders dated 01.04.1998 before the respondents during the personal hearing, the said contentions were rejected. The supporting vouchers produced by the petitioner were also not accepted.

4. The respondents have filed a counter affidavit before the Court below in which they have stated that on verification of the general ledger 1998-99, it is found that the employer has paid Rs.9,18,445/- under the head sales commission whereas the Inspector has furnished only Rs.3,22,105/-. It if further found that the Namakkal branch was situated in non-implemented area during the period of claim and no contribution is payable. The employer representation in this regard was examined with the general ledgers 1998-99 and 1999-2000 and it was found that the payments were through vouchers to various persons by name and not in the Deepavali season as represented by the employer. The employer also did not produce any documents to show that the payments were made to various persons by whom the diesel fuel pumps servicing was entrusted to them by the Company as commission.

5. With respect to tiffin expenses, the employer's representation was examined with the records of the employer such as general ledgers for 1999-2000 and the vouchers were produced by the employer. On verification of the same, it was found that payments were made every working day as the tiffin purchased and supplied to the staff. But the employer did not produce any bills to substantiate that the payments were made in canteen hotel / tea stalls. The employer's representation also admitted that they did not have any bills to support their stand.

6. The Court below after considering the contention raised by both sides and upon careful perusal of the general ledger produced by the petitioner which is marked as Ex.P9, came to the conclusion that it was 121 pages documents which is a computer generated ledger for the period from 01.04.1998 to 31.03.1999, wherein Page No.1016, the sales commission details were provided. The sales commission starts from 01.04.1998 which shows that the cash was paid to the various persons in personal capacity as

well as in some persons in the name of their agencies. Further being a computer generated ledger, the original print out along with origin of the datas, electronic records with authentication letter of person taken print outs digital signatures not produced before the Court below. Hence, the Court below came to the conclusion that there is no authentication of the electronic records as per Section 3 of the Indian Evidence Act and under Section 11 of the Information Technology Act. Thus, the Court below did not come to the conclusion that the Ex.P9 could not be taken as primary evidence and admissible evidence as under Section 85-B of the Indian Evidence Act, 1873.

7. With respect to tiffin expenses, the Court below came to the conclusion that the allowance is not a subsidy or the payment in lieu of an amenity available to the employees of the petitioner establishment. If the contract of the employment or any settlement provides for cash allowance in lieu of free tiffin, it can be treated as a sum included in the wages. But on the other hand, in the absence of any contract or settlement, the petitioner

establishment making payment towards tiffin expenses cannot be treated as wages and it would definitely attract Section 2(22)(c) and therefore, the claim with reference to tiffin expenses not liable for contribution and it is clearly exempted from term wage under Section 2(22) of ESI Act. Holding accordingly, ESIOP was dismissed, hence the present appeal has been filed by the appellant.

8. Heard the learned counsel for the appellant who has reiterated the contentions raised in the affidavit filed in support of the appeal.

9. The learned counsel for the respondents supported the impugned order on the ground that all the contentions raised by the employer establishment were well considered by the Court below and therefore, the impugned order does not warrant any interference.

10. This Court after going through the averments made in the appeal and the ground of the appeal as well as the arguments made by the

learned counsel on either side, is of the view that with respect to the sales commission, the contention raised by the employer establishment for a similar C-18 notice dated 01.12.2003 for the period 2000-01 was accepted by the respondents. On verification of the relevant records produced by the employer establishment whereas for the subsequent period, the respondents was not given any reasons for disbelieving the records produced by the employer establishment with respect to the similar sales commission. These contradictory findings given by the respondents for the year 1998-2000 will only prove the non-application of mind and passing of the mechanical order.

11. As far as Item Nos.9 and 10 tiffin expenses were concerned, the documents produced by the petitioner establishment was disbelieved by the Court below. The Court below also noticed that the petitioner establishment failed to produce the wage register in order to substantiate whether the employer establishment has provided any allowances for canteens or not. That apart, during the cross-examination, PW1 has clearly admitted that they are not paying overtime wages. Considering the said

aspects, the Court below came to the conclusion that the petitioner inspite of paying overtime wages has converted the same as tiffin expenses and in order to get exemption from ESI contribution has fabricated Ex.P9 stating as they have paid sales commission and tiffin expenses.

12. This Court sitting under appellate jurisdiction cannot go into the disputed question of facts and cannot re-appreciate the material evidence, therefore this Court is of the view that, the impugned order dated 06.07.2017 made in E.S.I.O.P.No.4 of 2007 can be set aside and the matter needs to be remanded back to the Court below for fresh consideration.

13. Accordingly, the impugned order dated 06.07.2017 made in E.S.I.O.P.No.4 of 2007 is set aside and the matter is remitted back to the Court below. While reconsidering the same, the appellant establishment has to be given one more opportunity of personal hearing and also the appellant establishment is directed to produce the documents substantiating their claim with respect to the sales commission and tiffin expenses. The Court

below on considering the additional evidence to be produced by the appellant establishment, shall pass a reasoned order within a period of twelve weeks from the date of receipt of a copy of the judgment.

14. With the above directions and observations, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Presiding Officer,
   Labour Court,
   Salem.

2. The Section Officer,
   V.R. Section,
   High Court, Chennai.

M.DHANDAPANI, J.

vji

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