BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.377 of 2016

The Employees' State Insurance Corporation,
"Panchdeep Bhavan" 4th Main Road,
K.K.Nagar, Madurai -20,
Represented by its
Deputy Director. ..... Appellant/ Respondent

-vs-

Sree. Ayyanar Spinning and Weaving Mils Limited,
Mallanginar,
Represented through its General Manager,
R.Rajendran,
Virudhunagar District. .... Respondent /Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the order dated 16.12.2015 of the Labour Court, (Employees' Insurance Court), Madurai, in ESI OP No.60 of 2007.

For Appellant : Mr.P.Ganapathisamy

For Respondent : Mr.G.Arunachalam

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the ESI Corporation, challenging the order passed by the ESI Court, reversing the order under Section 45-A of ESI Act, under two heads of demand made by the ESI Corporation.

2. The employer is a Spinning and Weaving Mills Limited in Virudhunagar District. There was an inspection by the officials of the ESI Corporation in December 2006. As per the inspection report, certain wages were omitted for the purpose of contribution relating to the period between 01.04.2002 to 31.03.2006. A show cause notice was issued by the Corporation on 08.01.2007 demanding a sum of Rs.23,99,698/- (Rupees Twenty Three Lakhs Ninety Nine Thousand Six Hundred and Ninety Eight only). After considering the explanation submitted by the employer, an order under Section 45-A was passed on 20.07.2007 fixing the liability upon the employer to pay a sum of Rs.10,44,037/- (Rupees Ten Lakhs Forty Four Thousand and Thirty Seven only).

3. The said order under Section 45-A of the Act order was challenged by the employer by filing ESI O.P.No.60 of 2007, before the Labour Court, Madurai. The ESI Court had considered the order under Section 45-A of the Act and came to a finding that the order has been passed under three different heads: (1) Machinery Maintenance and Repair charges, for which, the contribution demand was made for a tune of Rs.7,81,773/- (Rupees Seven Lakhs Eighty One Thousand Seven Hundred and Seventy Three only); (2) Loading and unloading charges claiming a sum of Rs.2,55,028/- (Rupees Two Lakhs Fifty Five Thousand and Twenty Eight only) and; (3) House Rent Allowance for the regular employees, for which, contribution was not paid a sum of Rs.7,206/- (Rupees Seven Thousand Two Hundred and Six only). As far as the demand arising out of non-inclusion of House Rent Allowance of regular employees is concerned, the ESI Court was pleased to confirm the order of the Corporation.

4. As far as the case arising under the head of Machinery Maintenance and repair is concerned, the Tribunal considering the fact that the total claim made by the employer which consists of the spare parts charges as well as the

salary of the maintenance personnel, had relied upon the Judgment of our High Court reported in ***2001 (1) L.L.N.354 (The Management of Jawahar Mills, Ltd., V. the Regional Director, Employees' State Insurance Corporation and another)*** and arrived at a finding that 20% of the said charges would be considered to be wages and reduced the said head to an extent of 80% and directed the employer to pay 20% of Rs.7,81,773/- (Rupees Seven Lakhs Eighty One Thousand Seven Hundred and Seventy Three only).

5. As far as the case of loading and unloading charges are concerned, it is the specific case of the employer that the loadman accompany the Truck or the Lorries and the payment was made in lump sum to any one of the loadman and the loadman shared it among themselves. The said amount is falling under the head of Transportation Charges. Further, it is contended that the loadman are not employees on a regular basis and they worked for so many other employers on even on the same day. The ESI Court had considered the judgment of the Honourable Supreme Court reported in ***1994(4)L.L.N- 612 (ESI Corporation V.Suriya Print Mark Industries Parithaba)*** and also the Judgment of the Honourable Supreme Court reported in ***(2010) - 11 SCC***

-537, (Managing Director, Hassan Cooperative Milk Producer's Society Union Limited V. Assistant Regional Director, Employees' State Insurance Corporation) and arrived at a finding that when the loadman being engaged periodically not under regular basis who are employed under different employers even on a same day, the contribution is not liable to be paid by the employer. Based upon the above said facts, the entire amount that was demanded under the head of loading and unloading charges was set aside by the Tribunal. Challenging the said award, the present appeal has been filed by the ESI Corporation.

6. The learned counsel appearing for the ESI Corporation referred to the Hon'ble Division Bench Judgment of our High Court in ***Soft Beverages (P) Ltd., Vs- E.S.I.Corporation*** reported in ***2001(2) LLJ Madras Page-149*** and also the judgment of the Honourable Supreme Court reported in ***Rajkamal Transport and another -vs- Employees' State Insurance Corporation,*** reported in ***1996 SCALE (3) 806,*** dated 17.04.1996 had contended that they have been employed in connection with the establishment and therefore, the contribution is liable to be paid for the charges paid to them.

7. The learned counsel appearing for the appellant had further contended that for the maintenance of the machinery regularly, maintenance personnel are employed by the employer and therefore, they should be treated as regular employees. The contribution should be paid by the management towards the salary/wages paid for such maintenance personnel. He further contended that the Tribunal was in error in taking only 20% of the said amount for the purpose of payment of contribution. Hence, he prayed for allowing the appeal with regard to the contribution arising out of machinery maintenance and repair, loading and unloading charges.

8. Per contra, the learned counsel appearing for the respondent/ employer had contended that the voucher produced by the employer towards machinery maintenance and repair, would clearly show that both the spare parts and the wages are combined. Therefore, the Tribunal was right in relying upon the judgment of our High Court in reducing 80% of the said voucher charges under the head of spare parts and the balance 20% towards the labour charges and therefore, the contribution is payable only at the rate of 20%. He further contended that as per the reply given by the employer, the

loading and unloading work is being carried out not by the loadman regularly employed by the employer. The loadman accompanied the Truck or the lorry carrying the goods for the industry and the payment is being made to any one of the loadman and he is paid by the other loadman. Therefore, it is part of the transportation charges. As rightly pointed out by the Tribunal, the loadman are not regular employees and they are engaged by others also even on the same day. Therefore, according to the learned counsel appearing for the respondent, the order of the Tribunal may be confirmed.

9. I have carefully considered the submissions made by the learned counsel on either side.

10. The primary ground, on which, the present appeal has been preferred by the ESI Corporation is that the Tribunal ought not to have deducted 80% of the machinery maintenance and repair charges under the head of spare parts. He strenuously contended that the labour charges would be more in the case of maintenance of machinery. In the judgment of our High Court reported in ***2001 (1) L.L.N.354 (The Management of Jawahar Mills, Ltd., V. the Regional Director, Employees' State Insurance Corporation and***

another) this Court has arrived at a finding in Paragraph No.11 which reads as follows:

> *" ....11. Taking into consideration of the plea raised on both side and also the quantum of amount spent towards repair charges for the items mentioned above, this Court is of opinion that treating 20 per cent of the amount out of the abovesaid amounts spent for repair charges as labour charges, will meet the ends of justice and accordingly the percentage of the amount that may be taken for payment of contribution to the respondent can be fixed at 20 per cent out of repair charges. In view of the said position, this Court modifies the amount to be considered for payment of contribution at 20 per cent instead of 25 per cent fixed by Court below towards labour charges out of the repair charges show by the petitioner."*

11. In view of the judgment of our High Court, this Court is not inclined to interfere with the finding arrived at by the Tribunal. When no break up is made available by the employer, adopting the just assessment, this Court has arrived at 20 percentage of the amount out of the above said amount. Hence, the entire repair charges cannot be considered as labour

charges.

12. As far as the case of loading and unloading charges are concerned, the learned counsel appearing for the appellant Corporation had relied upon the judgment of the Hon'ble Division Bench of our High Court and also the Supreme Court Judgment in (***Rajkamal Transport and another V. Employees' State Insurance Corporation)***. As far as the judgment in (***Rajkamal Transport and another V. Employees' State Insurance Corporation)*** is concerned, that arises out of a case filed by a Transport Company. Therefore, the Supreme Court is of the view that loading and unloading are in connection with the establishment. However, in the present case, the said judgment cannot be taken into consideration, in view of the fact that the employer is a Weaving Mills. Of course, the loading and unloading work is regularly carried out in the Weaving Mills also. However, when the loadman are employed on periodical basis and not on a regular basis and they work with the different employers on the same day, the question of considering them as regular employees for the payment of contribution under ESI Act would not be appropriate. Therefore, this Court is inclined to follow the judgment of the Honourable Supreme Court reported in ***1994(4) L.L.N-***

612 ESI Corporation V. Suriya Print Mark Industries Parithaba and also Judgment of the Honourable Supreme Court reported in ***(2010) - 11 SCC -537, (Managing Director, Hassan Cooperative Milk Producer's Society Union Limited V. Assistant Regional Director, Employees' State Insurance Corporation)*** which are more appropriate to the facts of the case.

13. In view of the above said findings, this Court does not find any illegality or infirmity in the order of the Tribunal and there is no merit in the appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

16.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Labour Court,
(Employees' Insurance Court),
Madurai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,

Madurai.

R.VIJAYAKUMAR,J.

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