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C.M.A.No.2531 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2531 of 2023

and

C.M.P.No.23435 of 2023

M/s.B.N.T.Connections,
Rep. by its Manager,
Mr.Harish Bakshani
126, Nelson Manickkam Road,
Aminjikarai, Chennai 600 029.

.. Appellant

Vs.

1. The Regional Director,
Employees State Insurance Corporation,
143, Sterling Road,
Nungambakkam High Road,
Chennai 600 034.
2. The Deputy Director,
Employees State Insurance Corporation,
143, Sterling Road,
Nungambakkam High Road,
Chennai 600 034.
3. The Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road,
Nungambakkam High Road,
Chennai 600 034

.. Respondents



Prayer: This Civil Miscellaneous Appeal is filed under Section 82 (2) of ESI Act, against the Order dated 09.10.2019 made in E.I.O.P.No.192 of 2004 on the file of the Employees Insurance Court (Principal Labour Court at Chennai).

For Appellant : Mr.P.Subba Reddy
For Respondent : Mr.J.N.C.Kaushik

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the order dated 09.10.2010 in E.I.O.P.No.192 of 2004 on the file of Employees Insurance (Principal Labour Court at Chennai), in dismissing the Petition filed by the Appellant.

2. The Appellant herein engaged one M/s.Leo Constructions for construction of its factory at Perambur, Chennai in the year 1997-1998 and 1998-1999 on contract basis and undertook the contract work for construction activities and after completing the construction, the factory was handed over to the Appellant by M/s.Leo Constructions by collecting the necessary amount for construction work. Thereafter, the 3rd Respondent sent a notice on



18.06.2004 demanding the payment of ESI contribution to the tune of Rs.9,67,896/- from the Appellant Company, challenging which the Appellant herein preferred E.I.O.P.No.192 of 2004, before the Employees State Insurance (Principal Labour Court), Chennai and the same was dismissed vide order dated 09.10.2019. Being aggrieved over the same, the Appellant has filed this Civil Miscellaneous Appeal.

3. The learned counsel for the Appellant submitted that the the Appellant is liable to pay only a sum of Rs.4,41,000/-, along with interest which comes to Rs.6,00,000/- on behalf of their employees and as far as the balance contribution demanded by the Respondents- Corporation is concerned, the same is with respect to the workers of M/s.Leo Constructions, for which the Appellant is not liable, since they are the workers of Leo Constructions. He further submitted that Appellant-Company is not functioning as on date and therefore it would be difficult for them to pay contribution demanded by the 3rd Respondent.

4. In reply, the learned counsel for the Respondents submitted that the Principal Employer is liable to pay E.S.I. contribution in respect of the



employees who are directly or indirectly employed under Principal Employer.

In support on his contention, he relied on Section 2 (9) of the Employees State Insurance Act, 1948 (for brevity 'the E.S.I Act') and therefore the Appellant being the Principal Employer should not evade from making contributions with respect to the contractors engaged by him through M/s.Leo constructions. He further submitted that the E.S.I., Corporation has rightly issued the demand notice 18.06.2004 and the same was also confirmed by the E.S.I. Court and therefore the same need not be interfered with.

5. Heard both sides. Perused the records.

6. For the sake of convenience, Section 2 (9) of the E.S.I., Act is extracted hereunder:

(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and ____

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal



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employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of products of, the factory or establishment [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), [and includes such person engaged as apprentice whose training period is extended to any length of time] but does not include-]

a) any member of [the Indian] naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;

7. From a perusal of the aforesaid provision, it is clear that the Appellant Company is liable to pay contributions in respect of the contract labourers of M/s.Leo Constructions, who were engaged by them. But as of now the Appellant Company is not functioning and therefore they could not



be able to pay the contribution demanded by the E.S.I. Corporation.

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8. Considering the facts and circumstances of the case and also in view of the fact that the Appellant-Company is not functioning as on date, this Court directs the Appellant Company to pay a sum of Rs.6,00,000/- to the Respondents-Corporation towards E.S.I. Contributions demanded by them and with respect to the remaining amount demanded by the Respondents, the Respondents are at liberty to approach the Contract Employer M/s.Leo Contrcutions.

This Civil Miscellaneous Appeal is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

28.03.2024

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Index : Yes / No

Internet : Yes / No



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