# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 17.04.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Civil Miscellaneous Appeal No.346 of 2023**

M/s.South India Export Co (P) Ltd.,
Rep by its Managing Director,
Shri Vikram Jesudasan,
231, N.S.C Road,Chenna 600 001 ... Appellant

Vs.

Regional Office (Tamil Nadu),
Employees State Insurance Corporation,
Rep. By its Deputy Director,
Panchdeep Bhavan,
No.143, Sterling Road,
Chennai 600 034 ... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, set aside the Orders passed by the Principal Labour Court at Chennai in E.I.O.P No.15 of 2003 dated 16.02.2017 and allow the above appeal in the interest of justice.

For Appellants : Mr.P.Subba Reddy

For Respondent : Mrs.S.Sandhya

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**JUDGMENT-**

This appeal has been filed challenging the order passed by the Employees Insurance Court (Principal Labour Court) Chennai in

E.I.O.P No.15 of 2003 dated 16.02.2017, dismissing the petition filed by the appellant challenging the order passed by the respondent dated 19.11.2002, determining the contribution payable by the appellant at Rs. 5, 96, 843/-.

2. Heard Mr.P.Subba Reddy, learned counsel for the petitioner and Mrs.S.Sandhya, learned counsel for respondent.

3. The case of the appellant is that the respondent inspected the company of the appellant and based on the inspection report, a show cause notice dated 20.09.2022 in Form C-18 was issued proposing to determine the contribution of Rs.4,34, 897/- for the period from 1994 - 1995 and 2000-2001. After the receipt of the notice, there was no response on the side of the appellant and the relevant documents were also not placed before the respondent. In view of the same, an order came to be passed by the respondent on 19.11.2002, determining the contribution payable by the appellant at Rs.5,96,849/-.

4. Aggrieved by the above order, the appellant filed petition

before the Labour Court on the ground that no opportunity was given to the appellant to produce the relevant records and to establish the claim made by the appellant to the effect that what was paid was the clearing charges and the same cannot be construed as wages warranting the deduction of contribution.

5. The respondent had opposed this petition mainly on the ground that the appellant failed to pay the contribution for the omitted wages and the appellant also did not appear during the personal hearing and produce the relevant documents. Therefore, based on the inspection report, the order came to be passed directing the appellant to pay the contribution.

6. The Labour Court on considering the facts and circumstances of the case and on dealing with the rival claims, came to a conclusion that the appellant did not participate in the proceedings conducted by the respondent inspite of sufficient opportunity being given to the appellant. Even otherwise, the appellant did not produce any documents, ledger or other materials even before the Labour court in

order to enable the Labour Court to satisfy itself that the appellant has a *prima facie* case to establish that they are not liable to pay the contribution on the ground that the clearing charges paid to workers will not be construed as wages. The Labour Court also took into consideration the report of the Inspector. Accordingly, the Labour Court dismissed the petition filed by the appellant and confirmed the order passed by the respondent.

7. In the considered view of this Court, the appellant has not chosen to produce any of the documents to substantiate their claim either before the Labour Court or before this Court. The burden is upon the appellant to establish that clearing charges paid to the workmen are not wages. Whether it was clearing charges or wages, is something to be determined only based on the materials that are placed by the appellant. If the appellant fails to produce any evidence in this regard, the respondent has to necessarily construe it as wages and determine the contribution payable by the appellant.

8. It is also brought to the notice of this Court that this

company has been closed long back and it is no more in operation. In any event, this Court does not find any ground to interfere with the order passed by the Labour Court and there are no merits in this appeal and accordingly, the Civil Miscellaneous appeal stands dismissed. No costs.

**17.04.2024**

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To
The Principal Labour Court at Chennai

**N.ANAND VENKATESH, J.**

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**17.04.2024**