



*C.M.A(MD)No.1233 of 2013*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

**C.M.A(MD)No.1233 of 2013**

**and**

**M.P(MD)No.2 of 2013**

M/s.Diamond Shipping Agencies (P) Limited,  
Plot No.4, World Trade Avenue,  
Harbour Estate,  
Tuticorin-628 004.

... Appellant/Petitioner

Vs.

1.The Assistant Director,  
Employees State Insurance Corporation,  
Sub-Regional Office,  
1-B, Old Post Office Street,  
Tallakulam,  
Madurai-625 002.

2.The President,  
Tuticorin Stevedores Association,  
5A, World Trade Avenue,  
Harbour Estate,  
Tuticorin-628 004.

... Respondents/Respondents

**Prayer :** This Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the judgment and decree, dated 25.09.2012 made in E.S.I.O.P.No.10 of 2012 on the file of the Employees State Insurance Court (Labour Court), Tirunelveli.



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For Appellant : Mr.K.Hemakarthiskeyan

For R-1 : Mr.R.Ravikumar

R-2 : *Ex parte*

### **JUDGMENT**

The present Civil Miscellaneous Appeal has been preferred as against the order passed by the ESI Court in E.S.I.O.P.No.10 of 2012, Tirunelveli, dated 25.09.2012, wherein the appellant herein has filed a petition before the ESI Court challenging the order passed by the first respondent under Section 45-A of the ESI Act, dated 25.09.2012.

2. According to the appellant / petitioner, the appellant / petitioner is only liable to pay the amount mentioned in the impugned order after deducting the second respondent's liability, since the second respondent had a separate account for the contribution and already paid the contribution. At the time of arguments, both side Counsels agreed that in the impugned order itself the learned Judge in point No.3 observed that the



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amount due was from 01.08.1987 to 06.12.2012. Since it was not paid, the same was collected through order, dated 07.02.2012. To that effect, second respondent also adduced evidence and the first respondent has also admitted the same. Therefore, for all the employees, the contribution was paid by the second respondent. But however, the Tribunal thereafter passed order by dismissing the petition that the order is not pertaining to the contract labours of second respondent and the same is pertaining to other persons engaged by the petitioner. On perusal of the impugned order, the authority observed as follows:

*"On perusal of office records, it is seen that no compliance has been made by the contractor M/s.Tuticorin Stevedores Association for the contract employees engaged under Section 40 of the ESI Act, the Principal Employee shall pay in ....."*

3. Therefore, from the said observation of the authority, it is clear that the order was passed in respect of the contract labours engaged by the contractor second respondent. The Tribunal in the order itself admitted the payment made by the second respondent. Therefore, it is the duty of the authority to pass order by deducting the amount of contribution pertaining



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to the second respondent who already paid contribution. The appellant also fairly conceded that he is ready to pay the amount if any payable after deducting the amount pertaining to the second respondent. But in the order passed by the authority, no deductions were made and thereby, it is appropriate to remand the matter to the first respondent to look into the matter afresh and pass appropriate order after deducting the payments made by the second respondent. Therefore, the first respondent is directed to deduct the amount already paid by the second respondent and fix the contribution amount after deducting the amount already paid by the second respondent.

4. In view of the above said submissions made by both side Counsels and recording the submissions, this Civil Miscellaneous Appeal stands allowed by setting aside the order passed by the Tribunal in E.S.I.O.P.No.10 of 2012 by confirming the order of first respondent and the matter is remanded back to the first respondent for fresh consideration and the first respondent is at liberty to work out the quantum of the contribution to be paid by the appellant as stated above and he has to complete the exercise within a period of three months from the date of



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receipt of copy of the judgment afresh after giving opportunity to the parties. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

**19.02.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
BTR

To

- 1.The Employees State Insurance Court (Labour Court),  
Tirunelveli.
- 2.The Section Officer,  
Vernacular Record Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P. DHANABAL, J.**

BTR

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**19.02.2024**