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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.587 of 2012

and

M.P.(MD).No.1 of 2012

M/s.Kajah Enterprises Private Limited,
Represented by its Joint Managing Director.

... Appellant

Vs.

The ESI Corporation,
Sub-Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoonthurai,
Tirunelveli-627 001,
Represented by its Assistant Director.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 82(2) of E.S.I. Act, 1948, to set aside the fair and decreetal order dated 10.02.2012 in E.S.I.O.P.No.09 of 2021 on the file of the Employees State Insurance Court (Labour Court), Tirunelveli.

For Appellant : Mr.M.E.Ilango

For Respondent : Mr.C.Karthik



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JUDGEMENT

The present Civil Miscellaneous Appeal is preferred by the institution against the order dated 10.02.2012 passed in E.S.I.O.P. No.9 of 2011, on the file of the ESI Corporation. In the impugned order the ESI Corporation had imposed ESI liability on the institution.

2. The petitioner in the ESIOP is the appellant herein and the respondent in the same petition is the respondent herein. For the sake of convenience, the parties are referred to as institution for the appellant and the ESI Corporation for the respondent.

3. The contention of the petitioner is that he has engaged people under “job work”. The specific stand of the institution is that any job work will not attract ESI contribution. The concept of job work is that the manufacturer would hand over the raw materials belonging to him to job worker, in turn the job worker would complete the work and hand over the finished goods to the manufacturer and for the said job consideration would be paid to job worker. In certain cases, the raw materials would be purchased by the job worker and after completing the manufacturing process, the job worker would hand over the finished goods and would claim the cost of the raw materials plus the charges



for the job work. In short, the job work would be outsourced to another person and charges would be paid for the said job work.

4. The concept of job work was considered and the said issue was already settled by the Hon'ble Full Bench of this Court in the case of ***E.S.I. Corporation Vs. Bethall Engineering Company***, in ***C.M.A(NPD)No. 1765 of 1999, dated 24.07.2007*** and the relevant portion is extracted hereunder:

“7. It is thus clear from the dicta of the Supreme Court that where the job work is entrusted to a third party contractor and such third party contractor has engaged independent workers, the fact that the principal employer has power to reject the end product manufactured by the contractor, does not constitute an element of supervision within the meaning of Section 2(9) of the Act. The judgment of the Division Bench in Poonam Easwardas, Proprietrix, M/s.Kaleel Corporation Vs. Employees’ State Insurance Corporation (supra) relied upon by the appellant corporation is concerned with the direct employees of the establishment and has no application to the facts of the instant case which is about the contract employees.

8. The judgment of the Division Bench in South India Surgical Company Vs. The Regional Director, Employees’ State Insurance Corporation relied upon by the Employees’ State Insurance Corporation is also concerning the liability to pay the ESI charges in respect of the contractor/employees. The appellant in that case was a trading concern dealing in surgical instruments. They had erected some machines necessary for the



manufacture of surgical instruments and lend them to some contractors for the manufacture of surgical instruments. The Bench after referring to the decision in Calcutta Electric Supply Corporation -vs- Subhash Chandra Bose, cited supra, held that the contractor employees cannot be said to be the employee within the meaning of Section 2(9) of the Act merely because the supervisory controls were exercised by the manufacturers over the contractors for quality reasons. The relevant observations of the Division Bench are reproduced below:-

"18. In our opinion, so long as the appellant had arrogated to itself the right to reject the end product manufactured by the disputed workmen, those workmen could not be claimed to be falling within the meaning of Section 2(9) of the Act." ... In fact, the Supreme Court, in its judgment reported in Calcutta Electric Supply Corporation Limited -vs- Subhash Chandra Bose (1992-1-LLJ-475), has gone to the extent of holding that even in cases, where supervisory controls were exercised by the manufacturer over the contractors for quality reasons, that by itself would not lead to a conclusion that the workmen of those contractors to become employees of the manufacturer within Section 2(9) of the Act. In this context, the appellant's case is a fortiori one in the sense that the appellant does not exercise supervisory control and simply rejects the materials manufactured by the disputed workmen." (emphasis supplied)



5. However, the contention of the respondent is that under Sections 41 & 41 of the ESI Act, 1948, the petitioner is liable to pay contribution since he is being a principal employer.

6. After hearing the rival submissions, this Court is of the considered opinion that the respondent has miserably failed to understand the nature of contract between the institution and job worker. Any job work contract is permitted under law and in the said contract there is no employer and employee relationship. In the present case, it is beedi rolling work. Therefore, it can be understood that it is not an employer and employee relationship, as per the Judgment rendered by the Hon'ble Full Bench of this Court, as referred supra.

7. It is seen that the institution has deposited 50% in the ESI Corporation, based on the order passed by the ESI Court. Therefore, the same shall not be handed over to the institution and the ESI Corporation need not return the amount. However, the institution is not liable to pay the balance amount and the ESI Corporation is restrained from demanding the balance. The respondent shall not initiate any damages and interest proceedings for this impugned order.



8. With these observations, this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Employees State Insurance Court,
Labour Court, Tirunelveli.
2. The Assistant Director,
the ESI Corporation,
Sub-Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoonthurai,
Tirunelveli-627 001,
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No.587 of 2012

02.08.2024