IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 354 OF 2025

1. Deputy Director,]
Employees State Insurance Corporation]
Panchdeep Bhavan, S.No. 689/690,]
Bibwewadi, Pune – 411 037.]

2. Recovery Officer,]
Employees State Insurance Corporation]
Panchdeep Bhavan, S. No. 689/690,]
Bibwewadi, Pune 411 037] **...Appellants**

Versus

M/s. Cyrstal International,]
36/1/C, Vadgaon (Khurd),]
Sinhgad Road, Pune – 411 041.] **...Respondent**

Mr. Sujit Kurup for Appellant-ESIC.
Mr. Aumkar V. Joshi for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 5th May, 2025.

Judgment :

1. The First Appeal has been preferred challenging the judgment dated 10th December, 2014 passed by the Employees' State Insurance Court allowing the Application of Respondent-establishment filed under Section 75 of the Employees' State Insurance Act, 1948, challenging the order dated 25th February, 2009 passed by the Employees State Insurance Corporation claiming contribution. For the sake of convenience, the parties are referred to by their status before the Trial Court.

2. The Applicant is a garment manufacturer and had out-sourced certain works like embroidery, stitching, etc. to outside concerns. During the visit by the Insurance Inspector, it was found that there was substantial payment made towards such work and no contribution was paid towards those amounts and thus, contribution was claimed.

3. The order was challenged before the ESI Court and contention was that the work outsourced was given to independent establishments which are located away from the Applicant's factory and Applicant does not have any control over the operations of those establishments. It was contended that the relationship was principal to principal basis and the Opponent without identifying the eligible employees and without considering the relationship between the Applicant and independent agencies have claimed contribution. It was further contended that records were made available during the visit of Insurance Inspector, however, the same had not been considered.

4. The Application came to be opposed contending that during the inspection, it was found that for period from April, 2004 to March, 2005, the Applicant had paid Rs. 1,16,64,683/- to different units for job work for which no contribution was paid. The ESI Corporation contended that as the right of rejection was reserved with Applicant, the ultimate control and supervision was with Applicant.

5. Before the ESI Court, evidence was led by the Parties. In cross-examination, Applicant's representative has denied that 34 parties were the appointed vendors. He stated that samples were given to the vendors for carrying out the work as per the samples and the vendors gave delivery without delay. The documents such as bills, challans, etc. were produced before the ESI Court.

6. The Opponents examined the Insurance Inspector who stated about his visit in the year 2006. During cross-examination, the Inspector has admitted that he was shown the details of outside work performed and was given the list of 34 establishments. He has further admitted that he did not visit any of those establishments and the Inspector did not know how and what kind of work was going on in those 34 places and who is supervising or controlling at those 34 places.

7. The ESI Court held that the only evidence which the Opponent has produced is the observation recorded by the Inspector and the copies of bills and challans in the name of Meghana Garments, Solapur, which is apparently one of the 34 establishments. It held that there is no evidence produced to show that the work carried out in 34 establishments was under the supervision of Applicant and undisputedly, these establishments were situated away from the

Applicant's factory and they were not supervised or controlled by the Applicant. The ESI Court came to a conclusion that merely providing sample is not sufficient to establish that persons employed by 34 establishments were employed or working under the control and supervision of principal employer and that oral as well as documentary evidence is more than sufficient to establish that employees of 34 establishments were not employees of the Applicant and allowed the Application of the Applicant.

8. Learned counsel appearing for ESI Corporation would submit that in the cross-examination, the Applicant's representative had admitted that the terms and conditions of work were mutually fixed and samples were given to carry out work. It was only during the hearing that the gate-passes, bills, etc. were produced before the Court and none of the documents were made available at the time of personal hearing. He would further submit that the gate-passes, bills, etc. produced shows that the work was carried out as per sample and Applicant had the authority to reject the work in event, the same is not according to the samples which establishes the supervision and control over the said establishments. He would submit that the burden was cast upon the Applicant to produce necessary documents during the hearing of Section 45A Application, which was not done. He submits that during the visit of Insurance Inspector, it was found that substantial amount was paid to different units for job work for which no contribution was paid and therefore, the contribution has been rightly assessed. He submits that as necessary documents were produced during the hearing, appropriate amount was considered as wages and contribution was levied. He has taken this Court through the findings of the ESI Court and in particular, the admissions given by the Applicant that the work of stitching, buttoning and embroidery was outsourced to 34 establishments. He submits that supervision and control is established as there was right to reject the article if it is not according to the sample provided by the Applicant.

9. *Per contra,* learned counsel appearing for Respondent-Establishment submits that the records were produced during the visit of Inspector which showed that the amount was paid towards the outsourced work to about 34 establishments and there is admission of Insurance Inspector that list of 34 establishments was given where the work was carried outside the establishment. The Insurance Inspector did not visit any of those establishments and he did not know how and what kind of work was going on at those 34 establishments. He submits that without any investigation being done, the ESI Corporation has assessed the contribution on the amount paid towards the outsourced work and therefore, the ESI Court has rightly taken into consideration that there is no evidence which has been produced by the Insurance Inspector to show that the work which was being carried out was under the control and supervision of the Applicant.

10. I have considered the submissions and perused the record.

11. Based on the documents produced during the visit of Insurance Inspector, the ESI Corporation has assessed the contribution on the amount which was paid to different establishments. The impugned judgment records the deposition of Applicant's witness that there was no supervision or control over work performed at the outsourced establishment and all documents were shown to Inspector. It was specific case of the Applicant that the work was outsourced to 34 establishments, and that samples were given to them for carrying out the work according to the samples. The documents were made available to the Insurance Inspector, which is evidenced from the fact that he has assessed the contribution on amount which was paid to the outsourced units. It is evident that the Inspector had information of the units to which the work was outsourced. Despite having detailed information about the establishments where the work was carried out, Inspector did not visit any of those establishments and did not make any investigation as to the manner in which the work was carried out and whether the same was under the supervision and control of the present Applicant. Based on the records which show that the amounts paid to the outsourced units, the Inspector presumed that the same was under the supervision and control and assessed the contribution on the said amount. The fact that the amounts paid was to the knowledge of Insurance Inspector establishes that records were produced before the Insurance Inspector during his visit and therefore, the contention that documents were produced only during the hearing before the ESI Court is unacceptable.

12. The only ground on which the ESI Corporation held that there was supervision and control was the right of Applicant to reject the article if the article is not according to the sample. The act of supervision and control involves something more than rejection of article if the same is not according to the sample. It was necessary for the Insurance Inspector to complete the ground work and investigate into the manner in which the work was carried out in these 34 establishments to determine whether Section 2(9) of ESI Act applied.

13. The ESI Court on the basis of oral and documentary evidence came to a specific finding that the employees of 34 establishments are not employees of Applicant, which finding is finding of fact and nothing has been demonstrated to show that order passed by ESI Corporation suffers from any perversity. No assistance can be taken only from the admission in cross-examination of the Applicant's representative that the work of stitching and embroidery was outsourced and terms and conditions were mutually fixed.

14. In light of the above discussion, there is no substantial question of law involved in present Appeal as the finding is finding of fact.

15. Resultantly, First Appeal fails and stands dismissed.

16. In view of dismissal of First Appeal, nothing survives for consideration in the pending Interim/Civil Applications, if any, and the same stand disposed of.

[Sharmila U. Deshmukh, J.]