BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD).No.657 of 2024
and C.M.P.(MD).No.7858 of 2024

M/s.Shri T.P.Textiles Private Ltd.,
359/W-6, Srivilliputhur Road,
R.Reddiapatti-626 136,
Through its Executive Director. ... Appellant / Petitioner

vs.

1.The Deputy Director,
Sub-Regional Office,
Employees' State Insurance Corporation,
"Panchdeep Bhavan" 4th Main Road,
K.K.Nagar, Madurai-625 020.

2.Director & Additional Commissioner,
Sub-Regional Office,
Employees' State Insurance Corporation,
"Panchdeep Bhavan" 4th Main Road,
K.K.Nagar, Madurai-625 020. ...Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 82(2) of Employees' State Insurance Act against the Award of the Employees' State Insurance Court, [The Presiding Officer, Labour Court], Madurai, dated 02.11.2023 passed in E.S.I.[O.P] No.46 of 2013 dismissing the same.

For Appellant : Mr. S.Seenivasagam
For Respondents : Mr.I.Pinay Gash

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/T.P.Textiles, challenging the order dated 02.11.2023 passed by the Employees' State Insurance Court, Madurai made in E.S.I.O.P.No.46 of 2013.

2. Heard Mr.S.Seenivasagam learned counsel for the appellant and Mr.I.Pinay Gash, learned counsel appearing for the respondents 1 and 2 herein and perused the relevant records.

3. The appellant/Textiles namely T.P.Textiles Pvt.Ltd., is a factory producing textile yarn and is attracted by Factories Act. The appellant unit is governed under the Employees' State Insurance Act, 1948 and they are paying contributions in accordance with Section 40 of the above said Act r/w. Regulations 29 and 31 of the ESI Act (General Regulations), 1950 framed under the Act. The appellant/petitioner received notice through Form C-18 dated 09.01.2012 from the ESI Corporation alleging that the appellant Factory has not paid the contribution for conversion charges for the period from 2006-07 to 2009-10 and personal hearing was afforded and attended by the Advocate and by the Executive Director of the appellant Company on 23.02.2012, 12.03.2012, 18.04.2012,

02.05.2012 and 03.05.2012. Thereafter, the Deputy Director upon consideration of the records produced by the employer and the written objections given by the employer, fixed the contribution at Rs. 57,718/- under Section 45A of the ESI Act, 1948.

4. Aggrieved the employer preferred appeal before the Appellate Authority namely, the Director and Additional Commissioner. Upon hearing the employer and considering the objections raised in the counter, passed an order to pay Rs. 1,19,436/- instead of Rs.59,718/- assessed by the Authorised Officer in Section 45A order dated 24.07.2012.

5. The learned counsel for the appellant would vehemently contend that the conversion charges is reeling charges paid to job work units. The infrastructure available in their Mill was insufficient to carry out the reeling work. It is not their duty to verify whether the job work parties are covered under ESI or not. Among the 18 job work units, only 4 units have been covered under the ESI Act. He would further contend that the premises of the job work unit will not fall under the definition of factory. Social Security Officer has opined in

the inspection report that no contribution was payable on job work charges and conversion charges. It is his further argument that the job work was done without supervision of the employer.

6. Whereas the learned counsel for the respondents would vehemently contend that out of 18 job work units, 14 are not covered under ESI Act and principal employer has the power to supervise their work and therefore, the orders passed by the Authorities are valid in the eye of law and the ESI Court has also affirmed the order of the Appellate Authority.

7. Upon inspection, the Social Security Officer has opined in the inspection report that no contribution was payable on job work charges and conversion charges. He has also opined that job work was done without supervision of the principal employer.

8. During the enquiry before both the Authorities namely, Deputy Director and the Additional Commissioner, principles of natural justice have duly been followed.

9. However, it is pertinent to note that in the written objection, it is mentioned by the employer that they are not interested to produce the records.

10. The observations made by the Hon'ble Supreme Court in ***Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments and another*** reported in ***AIR 1974 SC 37***. As regards supervision in control of the job work, the Hon'ble Supreme Court has opined that "It is in its application to skilled and particularly professional work that control test in its traditional form has really broken down." It is, therefore, not surprising that in recent years the control test as traditionally formulated has not been treated as an exclusive test. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive.

11. In ***Poonam Easwardas, Proprietrix, M/s.Kaleel Corporation, 27, Mukkur Nallamuthu Street, Chennai-600 001 vs. Employees' State Insurance Corporation, rep.by the Regional Director, 143, Sterling Road, Nungambakkam, Chennai-600 034*** reported in ***2003-1-LW-685***, the conclusion of learned Single Judge

to the effect that the employer is liable to pay contribution on the amounts paid to the persons who did tailoring work though such work was done outside the premises of the appellant by using tools which did not belong to the appellant was affirmed by the Division Bench of this Court and the appeal filed by the employer was dismissed.

12. The law is well settled that a person can be a servant of more than one employer. The servant need not be under the exclusive control of one master.

13. In this case, the work of reeling has been outsourced. From the records, it is made clear that the appellant provided machineries at the premises of reeling job work. Through the said machineries, the reeling work got completed and the finished products are obtained. This Court is of the view that in reeling works, question of exercising control would not play a significant role because unlike in tailoring work, if the stitching is not done properly, then the proprietor of the garments unit cannot do any successful business and in that situation supervision and control plays a vital role.

14. As per Section 2(12) of ESI Act, "Factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed."

15. It is relevant to note that the employer has entered into an agreement of job work with various job work parties, some 18 parties, among them, only four units have ESI registration numbers. Therefore, the arguments of the learned counsel for the appellant to the effect that the job work parties have registered under Employees' State Insurance Act does not hold water and untenable.

16. The job work parties do their work outside the premises of the principal employer. When the job work units are not covered under Employees' State Insurance Act, then the principal employer is duty bound to pay compensation for them as per the conversion

charges paid by the principal employer to the job work units. Levying of contribution on conversion charges by the Employees' State Insurance Corporation throughout the country is uniform as regulated by the instruction dated 25.10.2007. As per the instructions in respect of the cases, where the job work is done outside the factory premises and such job work units do not have separate and independent ESI code numbers but supervision is exercised by the principal employer the relevant workers doing the job work are to be covered as employees and contribution has to be charged on conversion charges.

17. This Court is of the considered view that in this case, reeling process is concerned, exercise of supervision does not play a significant role and claim by the employer that he does not have any supervision or control over the worker cannot be taken as a strong defence, as the nature of work is a simple one. The conversion work is the part of manufacturing process. The job work units also doing manufacturing process namely reeling, doubling of the yarn spinning and bleaching of yarn. They also involve in manufacturing process.

18. The officer has taken 25% of the conversion charges as wages. But, the Appellate Authority has assigned the reasons to the effect that reeling and doubling the yarn are labour operations 50% can be treated as wages in the business of any fabrications provided by the appellant and remaining 50% to be sent to him for cost of power, cost of equipment and usage and profit margin.

19. The legislation in ESI Act is a labour welfare legislation and the contribution that are being paid to the coffins of the ESI Corporation will ultimately go to the workers to maintain their health and this Court is of the firm view that impugned orders of the learned ESI Court does not suffer from any perversity or infirmity.

20. Based on the records of the employer, the finding of the Appellate Authority, ultimately no substantial question of law arises.

21. Based on the aforesaid discussions and observations, this Civil Miscellaneous Appeal stands dismissed. The employer is permitted to pay the contribution within a period of four weeks from the date of receipt of a copy of this judgment as the matter pertains

to the year 2012. No costs. Consequently connected miscellaneous petition is closed.

Index : Yes/No 24.03.2025
Speaking / Non-speaking order
ssn

To:

1.The Deputy Director,
Sub-Regional Office,
Employees' State Insurance Corporation,
"Panchdeep Bhavan" 4th Main Road,
K.K.Nagar, Madurai-625 020.

2.Director & Additional Commissioner,
Sub-Regional Office,
Employees' State Insurance Corporation,
"Panchdeep Bhavan" 4th Main Road,
K.K.Nagar, Madurai-625 020.

3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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