IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 184 OF 2026

Employees State Insurance Corporation ... Appellant.

Versus

M/s. Panna Enterprises Through Mr.Jayantibhai Sawla ... Respondent.

Mr Sujeet Kurup, Advocate for the Appellant - ESIC.

Coram : Sharmila U. Deshmukh, J.
Date : March 25, 2026

P.C. :

1. By the present First Appeal, the challenge is to the judgment dated 16th September, 2015 passed by the Employees Insurance Court allowing the application and quashing and setting aside the C-18 show cause notice dated 11th October, 2001, order passed under Section 45A of the Employees' State Insurance Act, 1948 (for short, "ESI Act") dated 23rd March, 2005 and the notice of demand and order passed under Section 85B.

2. Briefly stated facts of the case are that the application came to be filed under Section 75 read with Section 77 of the ESI Act by the Respondent, which is a proprietary concern carrying on business of job work of stitching garments. The Inspector of ESIC visited the Applicant's premises on 19th May, 1999 and verified and checked all records till 1993 and claimed Rs.427/- as contribution on sundry expenses. On 11th October, 2001, C-18 notice was issued for sum of Rs.78,071/- for the same period. Thereafter, hearing was held and the impugned order dated 28th March, 2005 passed under Section 45A of the ESI Act assessing contribution of Rs.77,574/- after deducted Rs.427/- which was already paid. Subsequently recovery notice was issued and order was passed under Section 85B of the ESI Act levying the damages. The said orders were challenged by the Applicant before the ESI Act.

3. The Applicant's case was that the concerned employees in respect of whom the contribution was claimed were getting salary in excess of Rs.3,000/- and Rs.6,500/- in respective years and therefore they cannot be treated as employees within the meaning of Section 2(9) of ESI Act.

4. The ESI Court framed the relevant issues. The ESI Court noted from the order passed under Section 45A, that the stitching charges from 1994 and 1997 were paid to tailors who were drawing salary of Rs.3,000/- p.m. Similarly, the labour charges paid in the year 1997 to 1998 were again paid to the tailors and all were drawing salaries more than Rs.6,500/- p.m. It further noted that the employer had submitted the photocopies of statement of salary and muster-cum-wage register for the period 1994 to 1998.

5. It further noted the stand of the authority that as per the records submitted by the employer, the wages of all the tailors up to March 1997 were shown about Rs.3,000/- and suddenly in April, 1997, the wages were doubled and they were shown getting salary above Rs.6,500/- which again decreased to Rs.3,497/- p.m. as per the records submitted by the employer. The ESI Court held that for coming to the conclusion of inconsistencies, except the view of the Deputy Director there is nothing on record and that the records of the employer show that the concerned employees are not covered and passed the impugned order.

6. Mr. Kurup, learned counsel appearing for the Applicant would submit that the concerned employees in respect of which the contribution was sought was wrongly shown in the records as not being within the coverage limit. He submits that the same was shown only on paper as there cannot be any discrepancy in the wages whereby the wages were suddenly doubled and thereafter decreased. He submits that the records were created to evade paying of ESI Corporation and the ESI Court has failed to rightly appreciate the evidence and allowed the application. He would further submit that the impugned order directs repayment of the amount along with the statutory interest whereas the same should be as per the enactment as well as the regulations.

7. Upon query by this Court as the dues were claimed in respect for the period beyond the period five years from the date of on the contribution becomes payable, he would submit that the contribution was sought for the period from 1994 to 1998 and the C-18 notice was issued in the year 2001, whereas the second proviso to Section 45A was introduced by way of an amendment in the year 2010 and is inapplicable.

8. Insofar as the demand for contribution being beyond a period of five years is concerned, the amendment has been rightly pointed out by Mr. Kurup.

9. The Appeal can be filed against the impugned judgment only on the substantial question of law under Section 82 of the ESI Act. The assessment by the Authority for the contribution for the period 1994 to 1998 was based on the view taken by the concerned officer that there could not have been increase and decrease of the wages in the manner done and the assessment was done by covering the employees. It is not disputed that the employer had submitted the photocopies of the statement of salary and the muster-cum-wage register. Considering the records which are produced on record, the inconsistency in the wages was substantiated by documents. The finding under Section 45A was based on personal view of the officer concerned without any material on record.

10. The ESI Court has rightly taken into consideration the material produced on record and has allowed the application quashing the order passed under Section 45A of the ESI Act. The findings of ESI Court are findings of fact and as no perversity is demonstrated, no substantial question of law arises in the present case. The ESI Court has directed repayment of the amount which was deposited by the Applicant while filing the complaint before the ESI Court along with statutory interest which would necessarily mean the ESI Act and the Regulations framed thereunder.

11. Resultantly, the First Appeal stands dismissed.

[Sharmila U. Deshmukh, J.]