



C.M.A.Nos.2527 of 2021 & 2415 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on:</i>	<i>28.01.2026</i>
<i>Pronounced on:</i>	<i>06.03.2026</i>

CORAM :

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.Nos. 2527 of 2021 & 2415 of 2022

The Deputy Director,
Employees State Insurance Corporation,
Regional Office (Tamil Nadu),
No.143, Sterling Road, Chennai – 600 034.

...Appellant in both CMAs

Vs.

M/s. Saravana Stores (Textiles),
No.44, 45, Ranganathan Street,
T. Nagar, Chennai – 600 017,
Rep. By its Partner Mrs. Y. Lakshmi.

...Respondent in both CMAs

Common Prayer: These Civil Miscellaneous Appeal are filed under Section 82(2) of ESI Act, to set aside the Order dated 31.07.2018 passed in E.I.O.P.Nos.38 & 39 of 2006 on the file of the Employees Insurance Court, (Principal Labour Court, Chennai).

For Appellant in both CMAs : Mr. G. Narmadha

For Respondent in both CMAs : Mr. B. Hari Babu



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COMMON JUDGMENT

These Appeals are preferred against the Order passed in E.I.O.P.Nos.38 & 39 of 2006 dated 31.07.2018 on the file of the Employees Insurance Court, Principal Labour Court, Chennai.

2. Ms.G.Narmatha, learned counsel for the appellant/ESIC, submits that the respondent is a partnership firm engaged in the business of Textile goods and is covered under ESI Act. During a routine inspection of the respondent firm by the officials of the ESI Corporation, it was observed that an expenditure of Rs.1,87,22,527/- had been incurred by the respondent towards payment of wages to sales representatives and has been booked under the head “Sales Commission” and “Sales Incentives” in the general ledger. No satisfactory explanation was offered by the respondent regarding this huge expenditure except reiterating that the same was paid to individuals engaged for the purpose of bringing the customers and thereby aiding in the sales of the respondent's goods. Though vouchers were prepared in individual names, the said vouchers did not bear the signature of the payee and hence could not be accepted as genuine proof of the nature of expenditure. She further submits



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that the respondent was informed to come forward with the payment of contribution for the said amount as per the inspection report and spot letter dated 30.05.2005 which they failed to do so.

3.Her further contention is that in the absence of registers and records required to be maintained under Section 44 of the ESI Act, the authorities were constrained to invoke the procedure under Section 45 A to determine the contribution based on available information for the periods from 1992-93, 1995-96 and 1999-2000. The show cause notice in Form C-18 (Adhoc) dated 14.07.2005 was issued to the respondent proposing to determine the contribution of Rs.53,61,258/- for the period from 4/92 to 3/96, 4/96 to 12/96, 1/97 to 3/99 and 4/99 to 3/04. An opportunity of hearing was accorded to the respondent on 02.08.2005 which was postponed to 16.08.2005 at the request of the respondent. The stand taken by the respondent before the ESI authorities during 45 A enquiry as well as before the ESI Court that, the individuals to whom the disputed amount was paid are exempted employees, is incorrect. However, the learned Judge of the ESI Court failed to understand the definition of “exempted employees” as contemplated under Section 2 (10) of the ESI Act and without adducing any reason has held that even if these



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persons are employees they are exempted employees. The said impugned order has been passed without assigning any valid reason. Further, the ESI Court erred in relying upon the vouchers which did not bear the signatures of the payee and could not in any manner be accepted as valid proof of transaction between the respondent and the alleged individuals, one of whom were even examined by the ESI Court. The respondent has manipulated the said vouchers to evade the payment of contribution payable on the amounts paid as wages and shown as commission as well as sales incentives. Despite the fact that, the adjudicating authority under Section 45 A order, which has clearly stated the reason for rejecting the said vouchers, the ESI Court, had erroneously observed that the said authority has not considered the records produced by the respondent. The ESI Court further, failed to consider the fact that, even if the alleged amounts were paid to the individuals engaged directly in promoting the sales of the respondent on receiving weekly / monthly remuneration for the said work are none other than the employees of the respondent as per Section 2(9) of the ESI Act and the respondent is liable to pay contribution as stipulated. She would submit that, it is not the nomenclature which matters but the actual work done by the so called 'commission agents' alone that matters. The learned counsel in this regard had



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referred to the judgment FOCUSSED CORPORATE SERVICES (INDIA)

PVT. LTD VS Union of India (W.P.No.10236/2010) in which it is held that:

" Merely because commission is paid to the employees, they does not cease to be employees and even commission agents can be said to be an employee in this connection."

4. Thus, she would submit that the work of the said “Commission Agents” will squarely come under the definition of Section 2(9) of the ESI Act since the said provision specifically states that the definition of employee includes any person employed for wages on any work connected with the distribution or sale of the products of the factory or establishment. In the present case, the persons are working for the distribution or sale of the products of the respondent and therefore, the amount paid to them for the said work will amount to wages and they are liable to pay the contribution for the said amount.

5. On the other hand, Mr.B.Hari babu learned counsel for the respondent would submit that the respondent is a partnership firm governed by the provisions of the Indian Partnership Act, engaged in the business of textile



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goods, covered under statutory acts like Tamil Nadu Shops and Establishment Act, ESI Act, EPF Act and etc. Around 700 persons are employed under the respondent's establishment. Since the business of the respondent is highly competitive and in order to attract the customers, the respondent establishment has to search for suppliers of standard and quality materials. In these processes, the respondent availed the services of third party individuals and for such of those services, the respondent establishment paid certain amount as commission or incentive as the case may be. Those individuals to whom the commission/incentive is paid by the respondent establishment are not the employees of the respondent. There was no employer and employees relationship between the respondent establishment and the concerned individuals. Neither the provisions of Section 38 nor the provisions of Section 45 A of the ESI Act gets attracted. Therefore, the order of assessment by the appellant dated 09.01.2006 is exfacie, illegal and arbitrary without jurisdiction. The respondent establishment is maintaining correct and complete books of account and the same were produced before the appellant Corporation to prove that the commission/incentive/miscellaneous expenses will not form part of the wages/salaries. But the appellant corporation grossly failed to consider the above records and also failed to render any finding in



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this regard. Hence, the respondent establishment was constrained to file an application before the ESI Court under Section 75 of the ESI Act, 1948 for setting aside the order dated 09.01.2006 passed by the appellant corporation. The ESI Court considering the above facts and circumstances of the case, rightly set aside the order of the respondent passed under Section 45 A of the ESI Act dated 09.01.2006, warrants any interference.

6.Heard on both sides and records perused.

7.It is admitted fact that, the respondent establishment is a partnership firm governed by the provisions of the Indian Partnership Act, engaged in the business of textile goods, covered under Statutory Act like Tamil Nadu Shops and Establishment Act, ESI Act, EPF Act and etc. It is also not in dispute that 700 persons are employed under the respondent establishment. It is the case of the appellant corporation that, a team of officers of the appellant corporation inspected the office of the respondent establishment and observed that an expenditure of Rs.1,87,22,527/- had been incurred by the respondent establishment towards payment of wages to its sales representatives and had booked the same under the head "sales commission" and "sales incentives" in

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the general ledger. Where as, the respondent establishment would contend that since their business is highly competitive and in order to attract the customers they have availed the services of third party individuals, and for such services they have paid certain amounts as commission/incentive and therefore, neither the provisions of Section 38 nor the provisions of Section 45 A of the ESI Act is attracted.

8. Based on the ESI Act, 1948, commission agents promoting sales and receiving commission/incentives are generally not considered "employees" under the ESI Act if they are not subject to the direct control and supervision of the employer regarding their working hours and methods, and if they are paid solely based on the quantum of sales. However, this is a question of fact, and if a commission agent acts more like a sales person under the employer's direct control, they may be deemed as employees.

9. As per section 2(9) of the ESI Act, a person employed for wages in connection with the work of an establishment is an employee. The crucial factor is whether the relationship is "master – servant" (employer-employee) or "Principal-agent". If the agents are obliged to attend the premises, have no



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fixed working hours, and are not under direct day to day supervision by the principal employer, they are generally not covered. Further, when agents are independent and paid solely on the commission of sales, the amount paid does not constitute "wage" under Section 2(22) of the ESI Act. If the commission agent works outside the factory/establishment and does not work within the premises or precincts, they may not fall under the definition of an employee under Section 2(9) of the Act. While in some cases under the EPF Act, commission agents have been deemed employees due to the nature of the work, the ESI Corporation's own guidelines often exclude them if they are not under direct control. That is, when an independent agent without any fixed hours of work, employer having no direct control over them and the payment is made based on commission alone, and working outside factory/premises are "exempted employees". Therefore, the agents who are not required to attend factory premises and are paid based on sales volume are not covered as employees. The Courts often look at the actual nature of work over the nomenclature used, noting that independent agents paid only by commission are generally not deemed employees, even if PF cases might some times differ. In the absence of a true master servant relationship, commission agent fall outside ESI coverage.



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10. In the present case, the appellant failed to establish the crucial factor as to whether the relationship between the Commission Agents and the employer is employer-employee or Principal – agent and that the agents are obliged to attend the premises, having fixed working hours and they are under the direct supervision by the employer. According to the respondent, the agents are independent and paid solely on the commission of sales and therefore, the amount paid does not constitute "wage" as contemplated under Section 2(22) of the ESI Act. Therefore, the independent agents paid only by commission are generally not deemed employers and they fall outside ESI Coverage. Unless these individuals are entitled to enjoy the benefits/facilities available under the ESI Act to the employees, they only come under the nomenclature as "exempted employees". The respondent establishment has produced bunch of vouchers issued in the name of various persons and the same is marked Ex.P1 by the ESI Court. The ESI Court, accepting those documents has held that, there is no contra evidence on the side of the appellant corporation to prove that there is employer-employee relationship between the respondent establishment and the above concerned individuals. Further, it has held that, even if they are considered as the employees of the respondent establishment, they are not entitled to enjoy the benefits/facilities



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which are available under the Act to the employees, since those individuals are called as 'exempted employees' as per Section 2(1) of the ESI Act. No infirmity or perversity found in the order passed by the ESI Court, warrants any interference by this Court.

11. Accordingly, these Civil Miscellaneous Appeals are dismissed. No costs.

06.03.2026

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Employees Insurance Court, Principal Labour Court, Chennai.

2. The Section Officer,

VR Section, High Court, Madras.



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