

C.M.A.No.1109 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2023

Delivered on : 25.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.M.A.No.1109 of 2022

and

C.M.P.No.8124 of 2022

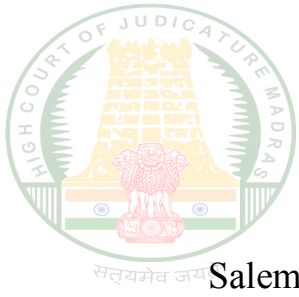
1.M/s.Sushil Plastic Product,
Sy.No.338/1, Plot No.61,
Bolupalli SIDCO Industrial Estate,
Krishnagiri – 635 115.

2.R.Anuradha,
Proprietrix, 3/648-2, Bharathi Nagar,
Arasanthi, Hosur-635 126,
Krishnagiri District.

... Appellants /Petitioners

Vs.

1.The Deputy Director,
Sub Regional Office,
E.S.I. Corporation,
39/57, Theerthamlaivanigavalagam,
Three Roads,



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Salem-636 009.

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2.The Recovery Officer,

Sub Regional Office,

E.S.I. Corporation,

39/57, Theerthamlaivanigavalagam,

Three Roads, Salem-636 009.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 151 of the Code of Civil Procedure, against the order of the Employees Insurance Court, Hosur, in E.S.I.O.P.No.10 of 2019, dated 09.03.2022.

For Appellants : Mr.T.Sellapandian
for Mr.J.Franklin

For Respondents : Mr.Ramachandramoorthy

JUDGMENT

The instant Civil Miscellaneous Appeal is filed against the order of the Employees Insurance Court, Hosur, in E.S.I.O.P.No.10 of 2019, dated 09.03.2022.

2. The appellants herein are the petitioners before the Court below. The Court below has passed an order, dated 09.03.2022, confirming the 45-A order. Aggrieved with the order of the Court below, the petitioners



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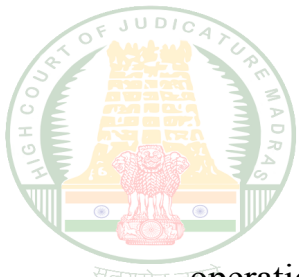
have come up with the instant Appeal.

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3. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court:

4. Brief facts which give rise to filing of the Appeal is as follows:-

The petitioners' premises was inspected by the officer of the first respondent, and a report was submitted on 12.02.2016, directing the petitioner to pay the contribution of Rs.1,12,161/- for the period from 01.04.2011 to 31.12.2015 towards E.S.I contribution. In pursuance there of, Form C-18 notice on actual basis, dated 31.03.2016, was issued, and another Form C-18 on Adhoc basis was issued on 31.03.2016, directing the petitioner to pay contribution in a sum of Rs.12,76,961/-. It appears that, the petitioners have paid a sum of Rs.1,43,770/- as per the Form C -18 on actual basis. However, they did not pay the amount in respect of proposal on Adhoc basis. The petitioners submit that, the respondents have no right to claim contributions on adhoc basis. They would further submit that, though they are liable to pay contribution for Labour charges, the respondent reckoned production cost, repair and maintenance charges, electricity charges transportation charges for movement of goods and



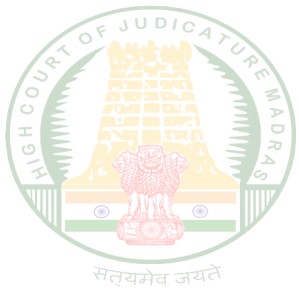
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operation of generator charges as wages, and directed to pay a contribution of Rs.11,75,862/-, under Section 45-A of the Employees' State Insurance Act (hereinafter referred to as "the Act"), dated 16.11.2016. In pursuance there of, on 18.04.2017, the E.S.I CP-2 notice was also issued for the payment of contribution.

5. Resisting the above contention, the respondent filed a counter statement denying the petitioners / appellants' allegation and would submit that inspite of sufficient opportunities, the petitioners did not submit relevant records, so as to segregate material costs, from labour charges so as to determine the contribution for wages. Hence, with the available records, they were constrained to determine the contribution as per Section 45-A of the Act.

6. Before the trial Court, on either side no witness was examined. However, on behalf of the petitioners, 6 documents were marked. But, on behalf of the respondents, no document was marked. After taking into consideration of the oral and documentary evidence and other materials on records, the trial Court has dismissed the E.S.I.O.P. and ultimately confirmed the order passed under Section 45-A of the E.S.I. Act.

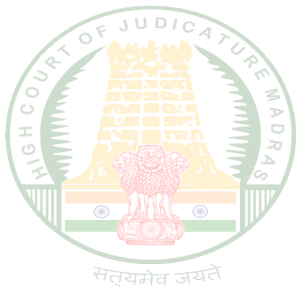


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7. After considering either side, the learned trial Judge though has referred to the judgment of the High Court of Karnataka reported in **2009-II-LLJ-420 (Kant) (Regional Director, Employees' State Insurance Corporation, Bangalore V. Management of Shagi Precision India, Mangalore)**, has not applied the ratio on the ground that no documents filed to make use of the above ratio and has ultimately, confirmed the order under Section 45-A of the Act.

8. Aggrieved with the above order, the learned counsel for the appellants would submit that the Court below did not take cognizance of the manufacturing expenses and committed a grave mistake by reckoning the manufacturing expenses as wages. The learned counsel would also submit that when the respondents considered the income tax return as the basis to arrive at the wages paid to the Employees, committed error in ignoring some of the deductions accepted by the income tax department. In substance, the submission of the learned counsel for the petitioners that the very 45-A order, reckoning the material costs and the other profit component as the wages is perverse. Hence, prayed to set aside the same.



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9. Per contra, the learned counsel for the respondents would vehemently submit that, though the petitioners / appellants would say that along with the labour charges, cost of material were also included, the petitioners, miserably failed to submit any document to prove such manufacturing charges and material cost. Therefore, the learned counsel prayed that the very finding of the Court below is to be confirmed.

10. I have given my anxious consideration to either side submissions.

11. Now, the sum and substance of this case is that, whether the unaccounted wage of Rs.1,80,90,183/- represents only the wages as defined under Section 2(22) of E.S.I.Act. In this regard, the respondents would contend that they have determined the contribution fully taken into consideration of the entire unaccounted wages covered for the period from 01.10.2011 to 31.03.2015 and has determined contribution of Rs.11,75,862/-. However, it is the submission of the learned counsel for the petitioners / appellants that in the total amount of Rs.1,80,90,183/-, the respondents has to exclude the profit component and material cost.



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However, it is the case of the respondents that, no documents have been filed to substantiate the such contention.

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12. On perusal of the records, notwithstanding the documents filed by the petitioners, in 45A order it has been stated that a sum of Rs.1,96,45,531/- has been considered as unaccounted wages, towards the head of security expenses, manufacturing expenses and repair and maintenance. In this regard, the petitioners have pleaded in para 6 of the petition that, having submitted the relevant vouchers and accounts to prove the expenditure towards the material cost and towards the expenses other than the labour charges, the respondents did not deduct those expenditure.

13. In this regard, it is pertinent to refer the counter statement of the respondents. Wherein, the respondent contended that the petitioners have not produced any record / register, balance sheet or voucher, to prove the expenditure other than the wages. It was further contended that only because of the non-production of the proper record, such as relevant register, the respondents, with no other option, taken actual expenditure incurred by the petitioners, towards manufacturing, repair and maintenance



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charges and has determined the contribution under Section 45-A of the Act.

Therefore, from the counter statement, it is apparent that there is no specific denial about the involvement of certain expenditure towards the material costs, and other aspect. However, the above said defence could not be considered by the respondents, as the petitioners did not submit any records.

14. At this juncture, this Court would deem it appropriate refer the judgment of the Hon'ble Division Bench of this Court reported in ***MANU/TN-1930-2003 (Regional Director, Employees' State Insurance Corporation V. Sundaram Clayton Ltd. and others)***. The relevant portion of the judgment is as follows-

14. With reference to the contribution of the labour charges, learned counsel for the appellant-Corporation relied on the decision of this Court in Management of Jawahar Mills Ltd. v. Regional Director Employees' State Insurance Corporation 2001-II-LLJ-793 (Mad) the unreported judgment in C.M.A. No. 1178/1990 dated June 5, 2002, pronounced by one of us (K. GOVINDARAJAN, J.) and another unreported judgment in C.M.A.No. 82/1991, dated December 15,



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1998, in support of his submission that if the accounts are not produced to find out the quantum of labour charges paid by them, 25 per cent of the total amount paid for construction of the building has to be taken as labour charges. In all those judgments, the learned Judges have come to the conclusion that in the absence of any accounts and break-up figures for payment of wages to the workers engaged for the purpose of constructing buildings, the request of the respondent-Corporation therein to fix the same at 25 per cent was reasonable.

15. As per the above judgment, the Hon'ble Division Bench of this Court has held that in the absence of any account book and break up figures for payment of wages, 25% of the total expenditure spent towards building construction, alone can be reckoned as wages.

16. The judgment of ***Sundaram Clayton Ltd. and others*** (cited supra) is in respect of a construction of the building. However, the case in hand is in respect of the manufacturing of the plastic products. For the reason best known to the petitioners, they did not care about the submission of relevant registers and vouchers. No doubt in ***Sundaram Clayton Ltd.***



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and others case (cited supra), while not submitting the relevant registers and vouchers, the Court took only 25% of the total expenditure towards labour charges, excluding 75% towards material costs.

17. But, on close and careful reading of the above judgment, it comes to our light that, in the said reported case an Engineer was examined and he has explained the involvement of the materials. Only in such background, this Court has excluded 75% of the total expenditure towards the material costs. In our case, the petitioners did not think fit to examine any witness, so as to explain the cost of materials. Therefore, the Court below as well as this Court is clueless as to what is the quantum of material cost. But one thing is certain that there could have been an involvement or expenditure towards the cost of the materials. Which factum was not seriously disputed by the respondent. Therefore, taking into consideration of the above factual position, this Court would deem it appropriate to deduct 25% of the total expenditure towards cost of materials, by the treating 75% towards labour charges. While applying the above apportionment, out of the total amount of **Rs.1,80,90,183/-**, we must take only 75% towards the labour charge. The same would come around



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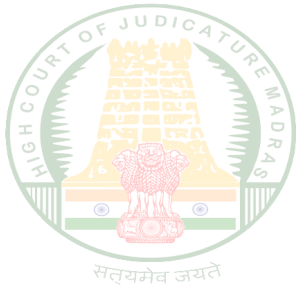
Rs.1,35,67,637/-. As per Section 38(2) of E.S.I.Act, r/w. Rule 51 of the E.S.I.(Central) Rules, the contribution would be 6.5% in the above amount.

Thus, the total contribution payable by the petitioners would be **Rs. 8,81,896/- (Rs.1,35,67,637/- X 6.5% = Rs.8,81,896/-)** .

18. In the result, the instant Civil Miscellaneous Appeal stands partly allowed, by modifying order of the Employees Insurance Court, Hosur, in E.S.I.O.P.No.10 of 2019, dated 09.03.2022, and directed to pay the modified contribution amount of **Rs.8,81,896/-**. The appellants are directed to pay the above contribution within a period of six weeks from the date of receipt of this order. Failing which, the respondents are entitled to recover the same, according to law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

25.08.2023

NCC : Yes
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C.KUMARAPPAN.,J.

Ls

To

1.The Employees Insurance Court,

Hosur.

2.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

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