(2017) 10 MAD CK 0031

In the Madras High Court

Case No : 565 of 2015 and M P (MD) No 1 of 2015

Omega Zips APPELLANT

Vs

The Joint Director, ESI Corporation, Sub Regional Office RESPONDENT

Date of Decision : 27-10-2017

Acts Referred:

Employees State Insurance Act, 1948, Section 45A, Section 2(22)(b) - Determination of contributions in certain cases - Definitions

Citation : (2017) 10 MAD CK 0031

Hon'ble Judges : G.R.Swaminathan

Bench : SINGLE BENCH

Advocate : G.R.Swaminathan

Final Decision : Allowed

Judgement

1. This appeal is directed against the order dated 01.04.2015 made in E.S.I.O.P.No.4 of 2014 filed by the appellant herein.

2. The appellant herein suffered an order under Section 45 A of the Employees State Insurance Act, 1948. That the appellant is covered by the

said Act is admitted. The only issue is regarding the levy of contribution. The authority took the view that while calculating the contribution, certain

heads were omitted. During the proceedings before the E.S.I. Court, as well as this Court, it was conceded by the appellant that the scope of

controversy is as to whether the component of conveyance allowance paid by them to the purpose can be included in the term ""wages"" for the

purpose of calculating the contribution. The ESI Court did not agree with the said submission. The ESI Court took the view that payment of

conveyance allowance on a uniform basis regardless of the employee concerned incurred any expenditure on his journey to the place of work is not synonyms with the travelling allowance envisaged in Section 2(22)(b) of the ESI Act.

3. This appeal was admitted as the following substantial questions of law arose for consideration:

Whether the Court below ought to have excluded the conveyance allowance paid by the appellant in view of section 2(22)(b) of the E.S.I.Act?

4. Heard the learned counsel on either side.

5. The learned counsel appearing for the appellant took me through the evidence adduced on both sides before the E.S.I. Court. The testimony of

R.W.1, the Social Security Officer working in the E.S.I.Corporation is significant. He admitted that if transport arrangements were to be made by

the establishment for all the workers, they would need atleast 20 vans. But, the establishment was having only 4 or 5 vans. The learned counsel

would also draw the attention of this Court to the decision rendered in (2004) 1 LLN 630 - Regional Director, Employees Insurance Corporation,

Madras V. Sundaram Clayton Ltd., Moppet Division (Registered Office, Madras) Following an earlier Division Bench decision of this Court

reported in 2001(1) LLN 943 - Management of Oriental Hotels Ltd., V. E.S.I. Corporation. It was held that the amount paid as conveyance

allowance will have to be excluded having regard to the specific exclusion provided in the definition itself for travelling allowance or the value of any

travelling concession. The conveyance allowance paid is in the nature of travelling allowance as the object of that payment is to enable the

employee to reach his place of work and to defray a part of the cost incurred on a travel from his place of residence to the place of work.

6. I am of the view that the case on hand is covered by the aforesaid Division Bench decisions. I therefore set aside the order dated 01.04.2015

dismissing E.S.I.O.P. No.4 of 2015 on the file of E.S.I.Court, Tirunelveli. The order dated 27.09.13 passed under Section 45 A of the Act by the

respondent is also set aside. The matter is remitted to the file of the respondent. The respondent is at liberty to pass fresh orders redetermining the

contribution payable by the appellant but without including the component of conveyance allowance.

7. This civil miscellaneous appeal stands allowed accordingly.

No costs. Consequently, connected miscellaneous petition is closed.

