

Principal employer not liable to pay ESI on out side jobs

Now principal employer is not responsible /liable for ESI contributions in respect of various jobs through contract labour done out side the premises.

The ESI authorities have been demanding and in many cases even recovered the ESI contributions from the employers for the work done from the venders without having any control or supervision over what to speak of their workers. In order to support its stand the ESIC has superceded the earlier instructions No. T-11/13/53/3-2000 Ins.-

IV dated 6.3.2000 by issuing its fresh instructions dated 26.8.2005 following with that of dated 17.8.2006.

The back ground of the matter is that in case no. MFA 1089/2001 Karnataka High Court had decided in ESIC Bangalore v. J.M.D. Fashions that out side establishments are not immediate employers under section 2(13) of the ESI Act. Against this decision ESIC went before Supreme Court and now Supreme Court wides it judgment dt. 12.3.07 has dismissed the petition of ESIC which means the decision of the

Karnataka High Court is upheld. Similarly recently M.P. High Court has also decided that in case of jobs done out side by contract labour and there is no element of supervision by the principal employer on such contract labour, in such case principal employer will not be responsible for ESI Contribution in respect of such contract labour.

Court has given this judgment in case of National India Rubber Works Ltd. All the three judgments are here for gainful knowledge of members.

KARNATAKA HIGH COURT

M.F.A. No. 1089/2001 (ESI)

Honable Mr. H. Billappa, J.

Decided on 15.7.2006

Employees' State Insurance Corporation vs. J.M.D. Fashions.

This MFA is filed u/s 82(2) of ESI Act against the order dated 27.1.01 passed in ESI application No. 1/2000 by the Addl. Industrial Tribunal and E.I. Court, Bangalore, allowing the application filed u/s, 75 of ESI Act.

This appeal coming on for hearing this day, the Court delivered the following:

Judgment

1. This appeal is directed against the order dated 27.1.2001 passed by the EI Court in E.S.I. Application No. 1/2000 allowing the application filed by the respondent herein.
2. The appellant claimed contributions on conversion charges and job work entrusted to the outside establishments for stitching for the period from 1992-1994. The said order was challenged by the respondent herein before the EI Court in E.S.I. Application No. 1/2000. The Court below, by its order dated 27.1.2001, has set aside the said order.
3. Aggrieved by that, appellant herein has filed this appeal.
4. The learned counsel for the appellant contended that the EI Court was not justified in holding that outside establishments are not immediate employers.
5. The EI Court, placing reliance on the decision of the

Division Bench of this Court and also of the Supreme Court, has held that outside establishments are not immediate employers under section 2(13) of the Act. In view of this, in my considered view, there is no merit in this appeal and hence it is liable to be dismissed.

6. Accordingly, it is dismissed.

SUPREME COURT OF INDIA

Recorded of proceedings

Petition(s) for Special Leave to Appeal (Civil 2007 (CC2218) (From the judgement and order dated 15/07/2006 in MFA No. 1089/2001 of the High Court of Karnataka at Bangalore) E.S.I. Corporation Petitioner(s) vs. M/s. J.M.D. Fashions Respondent(s)

With I.A.I. (c/delay in filing SLP)

Date : 12/03/2007 This Petition was called on for hearing today.

CORAM:

Hon'ble Dr. Justice A.R. Lakshmanan

Hon'ble Mr. Justice Altamas Kabir

For Petitioner(s) Mr. V.J. Francis, Adv., Mr. Anupam Mishra, Adv. Mr. Jenis, Adv.

For Respondent(s) UPON hearing counsel the Court made the following

ORDER

Delay condoned,

The Special Leave Petition is dismissed.

(Satish K. Yadav) (Phoolan Wati Arora)