कर्मचारी राज्य बीमा निगम
(श्रम और रोजगार मंत्रालय, सरकार भारत)
Employees' state Insurance Corporation
(Ministry of Labour & Employment, Govt. of India)
क.रा.बी.नि.
E.S.I.C

मुख्यालय/Headquarters
पंचदीप भवन, सी.आई.जी. मार्ग, नई दिल्ली -110002
Panchdeep Bhawan, C.I.G. Marg, New Delhi-110002
Website : www.esic.nic.in/www.esic.in

No.T-11/13/56/02/2020 Rev.II

Dated: 08.11.2021

To

All AC & RDs/Directors I/c/JD I/c/DD I/c
ROs/SROs, ESI Corporation

Sub: **SLP No.811/2021 in the matter of ESIC V/s M/s. Texmo Industries-regarding**

Sir,

I am directed to enclosed herewith a copy of the judgement of the Hon'ble Supreme Court of India, in the above mentioned SLP wherein the Hon'ble Supreme Court has held that the payment of Conveyance Allowance on the fact of present case does not fall under the definition of term "wages" as defined in section 2(22) of the ESI Act.

A dispute arose between M/s Texmo Industries Vs. ESIC on payment of contribution on conveyance allowance. The SRO Coimbatore had issued a demand to the employer for payment of contributions on conveyance allowance paid to the employees. This led to filing of an application u/s 75 of the Act by the employer before the E.I. Court challenging the said demand. The E.I. court gave its verdict against Corporation. Subsequently ESIC filed an appeal before Hon'ble High court which also went against Corporation.

Thereafter an SLP No.811/2021 was filed by Corporation before Hon'ble Supreme court of India, which was listed on 08.03.2021 for final hearing & decision. Hon'ble Supreme court of India dismissed the said SLP file by the Corporation vide its judgement dt.08.03.2021.

As per the judgement of the Hon'ble Supreme court of India and opinion of our learned Advocate, Conveyance Allowance shall not form part of the wages of the employees and the judgement holds good w.e.f. 08/03/2021.

Keeping in view of the above decision, copy of the judgement is circulated for necessary action and strict compliance.

This issues with the approval of the Director General.

Yours faithfully

(MOHIT RAJA)
DY. DIRECTOR (REV.)

Encls: as above

Copy to : Website Content Manager with the request to upload on the website of ESI Corporation.

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Special Leave Petition (C.) No.811/2021

The Employees State Insurance Corporation **...Petitioner (s)**

Versus

M/s Texmo Industries **...Respondent (s)**

O R D E R

1. This Special Leave Petition is against a judgment and order dated 8th October 2020 passed by the High Court of Judicature at Madras, dismissing the appeal being C.M.A. No.1527 filed by the Employees State Insurance Corporation, hereinafter referred to as the 'Petitioner Corporation', under Section 82(2) of the Employees State Insurance Act, and affirming the order dated 31st July 2020 passed by the Employees State Insurance Court, Coimbatore allowing E.S.I.O.P No. 1/2016 filed by the Respondent Company under Section 5 of the Employee State Insurance Act, 1948 (for short, 'ESI Act').

Signature Not Verified
Digitally signed by JAGDISH KUMAR
Date: 2021.06.25 16:37:34 IST
Reason:

2. The Respondent Company manufactures different kinds of agricultural pumps and other products and has ten branches in

Coimbatore, Tamil Nadu. The ESI Act is applicable to the factories and establishments of the Respondent Company, and the employees of the Respondent Company are required to be insured in the manner provided by the ESI Act.

3. The Respondent Company is liable to pay Employees' State Insurance Contribution in respect of its employees, as provided in Section 39 of the ESI Act. Section 44 of the ESI Act requires the Respondent Company to maintain a register, containing particulars of its employees, and to submit Returns to the Petitioner Corporation, in the manner prescribed by the Regulations framed under the ESI Act.

4. On or about 23rd January 2015, officials of the Petitioner Corporation inspected the records of the Respondent Company for the period from December 2010 to December 2014 and detected discrepancies in the wages, and consequential short payment by the Respondent Company, towards Employees State Insurance contributions, totalling Rs.21,52,829/-, out of which Rs.9,48,517/- was towards Conveyance Allowance, paid by the Respondent Company to its employees.

5. By an order dated 19th March, 2015, the Corporation called upon the Respondent Company to pay its outstanding contributions totalling Rs.21,52,829/-, with interest, within 15 days from the date of the order, failing which the same would be recovered as arrears of land revenue.

The Respondent Company was, however, given the opportunity of personal hearing, if it disputed the claim of the Corporation.

6. The Respondent Company made a representation against the claim, pointing out that the Corporation had erroneously computed the salary, by including Conveyance Allowance, leave salary, etc. which did not constitute wages as defined in Section 2(22) of the ESI Act.

7. Thereafter the Petitioner Corporation passed an amended order dated 6th July, 2016 under Section 45A of the ESI Act, determining the differential contribution payable by the Respondent Company at Rs.19,38,300/- as per the break up given in the said amended order, that is, Rs.9.89,783 towards difference in wages and Rs.9,48,517/- towards Conveyance Allowance. The Respondent Company duly remitted Rs.9,89,783/- towards difference in wages.

8. The Respondent Company instituted proceedings in the Employees State Insurance Court being E.S.I.O.P No.1 of 2016 in respect of the claim of the Corporation of Rs.9,48,517/- in respect of the Conveyance Allowance paid by the Respondent Company to its employees.

9. By a judgment and order dated 31st July, 2020, the Employees' State Insurance Court allowed the E.S.I.O.P No.1 of 2016, and set aside the claim of Rs.9,48,517/- in respect of Conveyance Allowance, paid by the Respondent Company to its employees.

10. Being aggrieved by the judgment and order dated 31st July, 2016 of the Employees State Insurance Court, the Corporation filed an appeal therefrom in the High Court under Section 82(2) of the ESI Act. The said appeal has been dismissed by the judgment and order impugned in this Special Leave Petition.

11. The short question involved in this Special Leave Petition is whether 'wages', as defined in Section 2(22) of the ESI Act, would include Conveyance Allowance paid by the Respondent Company to its employees.

12. Section 22(2) of the ESI Act is set out hereinbelow for convenience:

> *"**2.Definitions**.—In this Act, unless there is anything repugnant in the subject or context,—*
>
> *.....*
>
> *(22) "wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any p eriod of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any paid at intervals not exceeding two months], but does not include—*
>
> *(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;*
>
> *(b) any travelling allowance or the value of any travelling concession;*
>
> *(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or*

(d) any gratuity payable on discharge"

13. A reading of Section 2(22) of the ESI Act, makes it amply clear that 'wages' means all remuneration paid or payable in cash to an employee, under a contract of employment, express or implied, as consideration for discharging his duties and obligations under such contract of employment, including any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months. The definition of 'wages', however, expressly excludes any contribution paid by the employer to any pension fund or provident fund or under the ESI Act, any travelling allowance or the value of any travelling concession, any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment or any gratuity payable on discharge.

14. From the definition of wages in Section 2(22) of the ESI Act, it is amply clear that wages includes remunerative payments, but does not include compensatory payments. Travelling allowance including the value of travelling concession has expressly been excluded from the definition of wages, as also any payment made to an employee to reimburse or compensate for special expenses that an employee might incur by reason of the nature of his employment.

15. The Employees' State Insurance Court held, and in our view, rightly, that Conveyance Allowance is in the nature of travelling allowance, the object of which is to enable the employee to reach his place of work and to defray costs incurred on travel from his place of residence to his place of work. If instead of paying the Conveyance Allowance, the employer provided free transport to the employee, the monetary value of that benefit of travel from his residence, to his place of work would also not be regarded as forming part of his wages.

16. In ***Management of Oriental Hotels Ltd., Chennai v. Employees' State Insurance Corporation, Chennai*** reported in 2002 (1) LLJ 14, *a* Division Bench of Madras High Court held:-

> *"8. In so far as the conveyance allowance is concerned, even though it forms part of the wages being the amount payable in terms of the contract of employment, having regard to the settlement and even de hors the settlement, the payment of the amount would fall within the ambit of "additional remuneration." Nevertheless, that amount 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 the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of that benefit of free travel from his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilised on the travel from*

place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of Section 2(22)(b), of the Employees' State Insurance Act."

17. In ***Regional Director, ESI Corporation v. Sundaram Clayton Ltd.*** Reported in 2004 (II) LLJ 30 another Division Bench of the Madras High Court reiterated that, payment towards Conveyance Allowance for the travel of employees from their place of residence to their place of work would have to be construed as Travelling Allowance and excluded from 'wages' in view of clause (b), sub-section (22) of Section 2 of the ESI Act.

18. We affirm the view taken by Madras High Court in ***Oriental Hotels Limited, Chennai*** (supra) and ***Sundaram Clayton*** (supra). In ***Regional Director, ESI Corporation, Thrissur v. Royal Plastics Industries, Aluva*** reported in 2015 (2) KLT 64, a Single Bench of Kerala High Court referred to the judgment of the Madras High Court in ***Oriental Hotels' case*** (supra) and held that, clauses (a) to (d) of sub-section (22) of Section 2 of the ESI Act are in the nature of exception to the main part of the sub-section. Any Travelling Allowance or the value of any travelling concession would be outside the purview of the term 'wages', and that it would make no difference whether the Travelling Allowance was paid as part of the contract of employment, or whether it was paid in lump sum or whether it was paid at regular intervals. It would not cease to be Travelling Allowance only because it was a fixed sum paid along with the wages, as per the terms of the contract of employment. We agree with the view taken

by the Single Bench of Kerala High Court in ***Royal Plastics Industries*** (supra).

19. We are unable to agree with the view taken by the Single Bench of Karnataka High Court in ***Regional Director, Employees State Insurance Corporation v. M/s IT Solutions (India) Private Limited*** reported in ILR 2002 KAR 4019, that the value of Conveyance Allowance cannot be excluded from the definition of 'wages'. The reasoning of the Karnataka High Court that Conveyance Allowance cannot be excluded from the definition of 'wages' because Conveyance Allowance is paid every month to every employee like House Rent Allowance, in terms of the contract of employment, so as to meet to and fro conveyance expenses, whereas travelling allowance is paid to the concerned employee when he or she is sent out of station on duty to meet travelling expenses, is in our view, unsustainable in law.

20. We are of the view that, the reasoning that Conveyance Allowance cannot be excluded from the definition of 'wages' as it is paid every month to every employee, like House Rent Allowance, in terms of the contract of employment, so as to meet to and fro conveyance expenses, is is based on an erroneous construction of Section 2(22) of the said Act.

21. The definition of wages in Section 2(22) of the ESI Act clearly excludes Travelling Allowance. The distinction sought to be made by

the Petitioner Corporation between Travelling Allownace and Conveyance Allowance, based on the Single Bench judgment of the Karnataka High Court in **M/s IT Solutions (India) Private Limited** (supra), is in our view misconceived. There is no cogent reason why Conveyance Allowance which is in effect and substance the same as Travelling Allowance, should be treated differently from Travelling Allowance.

22. The expression "Travelling Allowance" has not been defined in the ESI Act. Under Section 2(24) of the ESI Act all words and expressions used, but not defined in the ESI Act shall have the meaning assigned to them under the Industrial Disputes Act, 1947, hereinafter referred to as the 'ID Act". Travelling Allowance is also not defined in the ID Act. There is no provision in the ESI Act or in the ID Act, which restricts the scope and ambit of Travelling Allowance. In the absence of any definition or explanation of the expression "Travelling Allowance" in either of those Acts, the expression has to be construed as per its ordinary meaning in common parlance.

23. Conveyance Allowance may or may not be payable to every employee. For that matter, House Rent Allowance may also not be paid to all employees. It is immaterial whether an allowance is paid regularly or intermittently depending on exigencies. It is the nature and purpose of the allowance which is relevant.

24. House Rent Allowance cannot possibly be equated to Conveyance Allowance, since House Rent Allowance is not necessarily connected with the employment of an employee. Irrespective of whether a person is employed or not and irrespective of the nature of his employment, he needs shelter.

25. Conveyance Allowance, on the other hand, compensates expenses that might be incurred by an employee for reporting to his usual place of work or to any other place of work, where he may have to report. If an employer were to provide the employee with accommodation within walking distance from his place of work and that employee were not required to go to any other place in connection with his duties under his contract of employment, the employee may not have to incur any expenditure in connection with his employment. In such a case, Conveyance Allowance would be redundant and might be construed as part of allowance consisting wages. In this case, it is not the case of the Corporation that the employees concerned did not need to avail any conveyance expenditure to report for duty to their place of work, or otherwise in connection with their duties under their contracts of employment. Nor is there any such finding. We see no reason why Conveyance Allowance should not be excluded from the definition of wages.

26. As per the *Oxford Learner's Dictionary, 8th Edition,* conveyance means the process of taking somebody from one place to another. A

vehicle or other mode of transport is also formally referred to as conveyance. As per the same dictionary, the word "travel" means "to go from one place to another especially a long distance". That distance could also be a few kilometers. One might travel 10 kms to one's place of work. In many cities people may have to travel for hours to reach their place of work. Travel is an expression with a wide meaning to include long distance. It also covers short distances.

27. Had it been the intention of Section 2(22) to exclude only occasional long distance travel from one city to another, from the definition of wages, the Act would have specifically provided so. The expression 'travel' is also often used interchangeably with the expression 'commute' which means "to travel regularly by bus, train, car etc. between one's place of work and home, as per the said dictionary. An example given in the said dictionary is "she commutes from Oxford to London everyday". Another example given is "people are prepared to commute long distances if they are desperate for work. The employees State Insurance Corporation Court was right in holding that there was no difference between Conveyance Allowance and Travelling Allowance.

28. There can be no doubt, as held by this Court in ***Whirlpool of India Limited v. ESI Corporation*** reported in (2000) 3 SCC 185 that the ESI Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to

make a provision for certain other matters in relation thereto. When there is any ambiguity in any provision, the Court would ordinarily favour a construction that would be beneficial to those for whom the legislation is enacted. In ***Whirlpool of India Limited*** (supra), this Court held that production incentive falls within the definition of wages. In this case, there is no ambiguity. There is no such difference between Conveyance Allowance and Travelling Allowance to justify the stand of the Petitioner Corporation that Conveyance Allowance would not fall within the ambit of Travelling Allowance. Travelling Allowance includes Conveyance Allowance. The use of the expression "**any** travelling allowance" in Section 2(22)(b) makes it clear that all kinds of travelling allowance are excluded from the definition of wages.

29. In ***Whirlpool of India Limited*** (supra), this Court referred to and relied *inter alia* on ***Wellman (India) (p) Ltd. v. ESI Corporation*** reported in (1999) 1 SCC 219, ***Modella Woollens Ltd. V ESI Corporation*** reported in 1994 Supp(3) SCC 580 and ***Harihar Polyfibres v. Regional Director, ESI Corporation*** reported in (1994) 4 SCC 7. In ***Wellman*** (supra), this Court held that attendance bonus payable to employees under the terms of settlement, which became part of the contract of employment was well within the definition of wages. In ***Modella Woollens*** (supra), the payment of production bonus to the employees at the end of each quarter was held to be wages. In ***Harihar Polyfibres*** (supra), this Court held that payment made at intervals not exceeding two months such as "House

Rent Allowance", "Night Shift Allowance", "Incentive Allowance" and "Heat, Gas and Dust Allowance" was covered by the definition of wages under Section 2(22) of the ESI Act. None of the judgments dealt with Conveyance Allowance or Travelling Allowance.

30. There is no infirmity at all in the concurrent findings of the High Court and the Employees' State Insurance Court, which calls for interference under Article 136 of the Constitution of India. The Special Leave Petition is dismissed.

.....J.
[Indira Banerjee]

.....J.
[Hrishikesh Roy]

New Delhi;
March 08, 2021

ITEM NO.13/1 Court 13 (Video Conferencing) SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 811/2021

(Arising out of impugned final judgment and order dated 08-10-2020 in CMA No. 1527/2020 passed by the High Court Of Judicature At Madras)

THE EMPLOYEES STATE INSURANCE CORPORATION Petitioner(s)

VERSUS

M/S. TEXMO INDUSTRIES Respondent(s)

(IA No.4677/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 08-03-2021 This petition was called on for hearing today.

CORAM :
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Dr. Sumant Bharadwaj, Adv.
Ms. Mridula Ray Bharadwaj, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The Special Leave Petition is dismissed in terms of the signed reportable order.

(NIRMALA NEGI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed reportable order is placed on the file)