IN THE COURT OF GOPAL KRISHAN, ADDITIONAL SENIOR CIVIL JUDGE-01, CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

ESIC No. 11/2016
CNR No. DLCT03-000105-2012

In the matter of :-

Delhi Transport Corporation
IP Estate
New Delhi .....**Petitioner**

Versus

1. **Director General of Employees**
State Insurance Corporation
Panchdeep Bhawan,
Near Bal Bhawan, ITO,
New Delhi-110002

2. **Regional Director**
Employees State Insurance Corporation
Regional Office Rajindra Bhawan
Rajjindra Place,
New Delhi-110008 .....**Respondents**

Date of institution	:	**05:12.2012**
Date of judgment	:	**14.08.2026**
Decision	:	**Partly allowed**

PETITION U/S 75 OF THE EMPLOYEES STATE INSURANCE ACT, 1948

JUDGMENT

1. This is a petition u/s 75 of The Employees State Insurance Act, 1948 (hereinafter referred to as 'Act'), wherein the petitioner Delhi Transport Corporation (hereinafter referred to as

‘petitioner’ or ‘DTC’), has challenged the demands raised by the respondent Employees' State Insurance Corporation (hereinafter referred to as ‘respondent’ or ‘ESIC’ or ‘corporation’) vide its order under section 45 A of the Act, concerning ESI contributions relating to various heads.

PETITION

2. Brief facts, as per the petition, are that following the phasing out of privately-run "Red Line" buses on account of safety concerns and poor performance, and in consultation with and approval of the Government of NCT of Delhi, petitioner/DTC introduced the Kilometer Scheme in 1996-97, under which, private operators were engaged to ply their buses on fixed routes at a rate per kilometer, subject to a maximum daily ceiling of 225 km, with DTC providing only the conductor for fare collection. It is indicated that under this scheme, the bus itself, its driver, and its repair and maintenance remained the exclusive responsibility of the private operator, who, under clause 22(b) of the governing Agreement (i.e. agreement entered into by petitioner/DTC with private operators of these buses), bore all statutory obligations, including ESI liability. DTC contends that this arrangement constituted a "contract for service" and not a "contract of service," and that the drivers engaged by private operators were accordingly not its employees within the meaning of Section 2(9) of the ESI Act. It is further indicated that most operators, being single-bus owners, who at times drove the buses themselves or engaged family members, did not meet the minimum-employee threshold prescribed for ESI applicability. It is further the case of the petitioner that the respondent has wholly ignored that 6000-7000 individual private

bus operators operating for the period 1996-2002 were wholly independent and separate units unconnected with each other and thus not inviting the applicability of the Act per se.

3. With respect to claim regarding Civil Engineering Department (CED) staff, DTC stated that it has already contributed and paid the ESI contribution in respect of all the employees who were covered under ESI Scheme during the period 1994-95 to 2004-05 including CED staff. It is further indicated that the total wages of covered employees for the relevant period, to the extent records were available, was physically verified and shown to the ESIC inspection team during their visit in May 2012. It is further alleged that the wages of CED staff not covered under the scheme were separately stated to be approximately Rs. 8.62 crores, likewise conveyed to ESIC, which offered no rebuttal. DTC further indicated that records of a few depots that had ceased operations, such as Terminal Nehru Place, Raja Garden, and Wazirpur Depot III, could not be traced due to the passage of time, a fact known to the inspection team.

4. As regards the claim relating to construction activity carried out through NBCC, DSIDC etc., DTC stated that it had constructed approximately 1,200 bus queue shelters through NBCC Ltd. and 500 through DSIDC, incurring about Rs. 24 crores, besides Rs. 52.34 lakhs towards repairs, and the total expenditure on construction outside its premises was about Rs. 33.15 crores, which DTC contended was not covered by ESI provisions as the construction activity was not undertaken within its factory premises or shops and, therefore, ESI was inapplicable to the expenditure incurred thereon. It further relied on

communications from NBCC dated 08.08.2006 and DSIDC dated 05.12.2006, stating their non-coverage under the ESI Act, and ESIC's letter dated 14.06.1999 acknowledging non-applicability to migrated construction workers. Accordingly, DTC contends that no basis for the alleged claim of Rs. 53.51 lakhs qua this construction activity was ever furnished by respondent despite repeated requests.

5. DTC asserted that it duly deposited ESI contributions for its own directly covered employees throughout the relevant period of 1994-2005 to the tune of Rs. 16.96 Crores and was regularly visited and inspected by ESI officials without any adverse finding or complaint being raised at the time, but despite this history, ESIC issued a show cause notice on 06.06.2006, nearly a decade after, raising an initial demand of approximately Rs. 19.16 crores. It is further alleged that this figure was subsequently reduced, without any disclosed basis, to Rs. 9.28 crores vide order dated 21.03.2007, and later further reduced to Rs. 8.45 crores vide communication dated 29.06.2012. DTC indicated that these ever-changing figures were derived arbitrarily from balance-sheet entries without particulars of methodology, and without DTC being afforded a genuine, meaningful opportunity of hearing over the basis of calculation.

6. It is further submitted that Section 45-A is not attracted in the present case because neither any hurdles were created nor it is that the documents/records were not produced before ESIC.

7. Petitioner has also detailed out in the petition that aggrieved by notice/order dated 06.06.2006, 21.03.2007 and consequential orders dated 08.5.2007, 22.05.2007, 17.12.2007 and the final attachment order dated 18.01.2008, pursuant to

which approximately Rs. 47.21 lakhs were recovered from DTC's bank account (in addition to an earlier recovery of Rs. 1.17 crores), the petitioner/DTC initially filed WPC No. 534 of 2008 before Hon'ble High Court of Delhi. It is further mentioned that by order dated 21.01.2008, Hon'ble High Court stayed the operation of the impugned orders and issued notice to ESIC. It is further indicated that during the pendency of the writ petition, pursuant to the Supreme Court's ruling requiring inter-governmental disputes to be examined by a Committee of Disputes, the matter was referred to that Committee, but alleged that the mediation process ultimately failed on account of ESIC's inability to justify its demand.

8. It is further alleged that during the pendency of said Writ Petition, when ESIC issued a demand on 29.06.2012 by reducing the claim to Rs. 8.45 Crore (including Rs. 6.50 crore as a liability under Kilometer Scheme), DTC objected and eventually moved Misc. Application No. 17106 of 2012 in the pending writ petition, resulting in an interim stay on communication dated 29.06.2012 vide order dated 09.10.2012 of Hon'ble High Court of Delhi. It is further alleged that on 30.10.2012, Ld. Counsel for ESIC for the first time invoked Section 75 of the ESI Act, contending that DTC's proper remedy lay before the Employees' Insurance Court, whereupon DTC agreed to pursue the remedy before this Court, subject to continued protection from coercive action. It is further indicated that Hon'ble High Court, accordingly, disposed of the writ petition, directing DTC to approach the Employees' Insurance Court within six weeks, with the interim orders dated 21.01.2008 and 09.10.2012 to continue operating pending such proceedings, and with the time spent

before the High Court to be excluded for purposes of limitation.

9. DTC has accordingly filed the present petition, stating that the impugned show cause notice, assessment order, and recovery proceedings are without jurisdiction and dehors law. DTC has sought following reliefs in this petition –

(a) quash and declare the order dated 06.06.2006 and order dated 21.03.2007 read with order dated 08.05.2007, 22.05.2007 and 17.12.2007 along with final order of attachment dated 18.01.2008 followed by letters dated 29.06.2012, 30.07.2012, as illegal, void and ab-initio;

(b) direct the respondents to refund the excess amount lying deposited with the respondent ESIC through attachment or otherwise, along with interest @ 18% p.a.;

(c) award costs of the present proceedings in favour of the petitioner; and

(d) pass such other or further order/relief(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the petitioner.

<u>REPLY/WS</u>

10. In its reply, respondent/ESIC resisted the petition on both preliminary and substantive grounds. As preliminary objections, it is contended that the petition has been filed only to stall recovery of statutory dues and interest that has become due on account of delayed payment. It is further indicated that DTC is barred from reagitating the claim of Rs. 1.94 Crores (out of total claim of Rs. 8.45 Crores raised by letter dated 29.06.2012), which was disallowed by Committee of Dispute in its order dated 01.11.2011, unless de novo approval of Committee of Dispute is granted.

11. On merits, qua the question of employer-employee relationship qua drivers under Kilometer Scheme, ESIC relied on a conjoint reading of Clauses, particularly clause 6, 7, 8(a), 9, 10, 16, 20 and 22(b) of the Kilometer Scheme Agreement to state that DTC exercised clear and indisputable control and supervision over the buses and their drivers, because the buses operated under DTC's Stage Carriage Permit, along fixed DTC routes and timetables, with a DTC conductor stationed on board collecting fares against DTC tickets. This, as per ESIC, satisfied the test of "contract of service" and making the drivers of private operator buses employees of immediate employers coverable under section 2(9)(ii) of the Act, rendering DTC, the principal employer, liable for contributions irrespective of who directly disbursed the drivers' wages, and no records recording drivers drawing wages in excess of the wage ceiling have ever been produced.

12. Regarding construction work of BQS executed through NBCC, DSIDC, etc., ESIC denied having issued any blanket exemption to these agencies, and asserted that labour engaged for repair, maintenance, or additional construction of a covered establishment remains coverable under the Act irrespective of which agency or contractor engaged such labour, relying on the Hon'ble Supreme Court's judgment in **ESIC v. South India Flour Mills, AIR 1986 SC 1686**. It is indicated that as per records produced, the petitioner made payments of Rs.32.93 Crores to building agencies, which subcontracted the work, and since labour and material costs were not separately identified, ESIC assessed 25% of the expenditure as wages and determined Rs.53.51 lacs as payable contribution.

13. As regards CED staff, ESIC maintained that CED employees are coverable under the Act, a position corroborated by the inspection report dated 14.02.2007 based on vouchers and bills produced by DTC itself. The respondent ESIC denied the petitioner DTC's contentions and states that, during the inspection on 23.05.2012, DTC produced records of 26 depots showing wages of Rs.11.57 Crores for 1995–2005, against which ESI contributions were paid through consolidated challans, however, DTC failed to furnish records concerning the remaining Rs.19.62 Crores claiming that the old records were untraceable. Accordingly, it is contended that assessment was made for this unexplained wages/salary of CED staff by reducing the demand to the extent of explained amount.

14. ESIC indicated that the original show cause notice dated 06.06.2006, demanding Rs. 19.16 Crores for the period April 1995 to March 2005, was necessarily based on DTC's own balance sheets, since DTC had failed to produce supporting bills, vouchers, or wage records. It is indicated that at a meeting held on 02.11.2006 at ESIC Headquarters, and at DTC's own request, a team of four Inspectors of respondent corporation was deputed for re-verification of records as a special exercise; and based on their report dated 14.02.2007, the demand was revised downward to Rs. 9.28 Crores, duly communicated to DTC via letter dated 02.03.2007, followed by a reasoned, speaking assessment order dated 21.03.2007 passed under Section 45-A. ESIC specifically denied that DTC ever paid Rs. 16.96 crores against this particular notice, and asserted that the figures underlying its claim were themselves drawn from statements and annexures prepared, verified, and signed by DTC's own officials and accordingly,

DTC is now estopped from disowning them.

15. It is further indicated that during pendency of case before Hon'ble High Court of Delhi, pursuant to Committee of Disputes order dated 20.05.2010 and Hon'ble High Court's order dated 01.11.2011, a re-verification exercise was conducted on 23.05.2012, during which DTC produced further records and in view of production of further partial records, the final claim was further reduced to Rs. 8.45 Crores vide order/communication dated 29.06.2012.

16. Regarding recovery action, ESIC stated that Rs. 47.21 lakhs were recovered strictly through due legal process consequent upon default, and that the earlier recovery of Rs. 1.17 crores related to a separate and distinct demand (C-19 dated 10.02.2006) not forming part of the present dispute.

17. ESIC denied any violation of the principles of natural justice, setting out in detail a sequence of hearings, adjournments, and requests for time extended to DTC's officials between June 2006 and September 2006, culminating in the reasoned assessment order dated 21.03.2007. It attributed the entire delay and non-finalization of the matter to DTC's persistent failure to produce books of account and wage records, across twelve inspection visits between 1995 and 2003. ESIC accordingly prayed to dismiss the petition with cost by upholding the assessment order dated 21.03.2007 followed by order dated 29.06.2012 calculating outstanding dues of Rs. 8.45,21,014/- together with interest as legitimately determined under Section 45-A of the Act, and declining the prayer for refund of amounts recovered.

Replication

18. In its replication, while reiterating the averments made in the petition and while denying the correctness of averments of respondent to the contrary, DTC indicated that ESIC failed to establish any specific shortfall from its own records and the unexplained methodology behind ESIC's changing demands, according to DTC, renders the proceedings arbitrary, non-speaking and contrary to natural justice.

Issues:

19. On the basis of pleadings of the parties, following issues were framed for trial by this court vide order dated 01.05.2013 -

> *1. Whether the plaintiff is entitled to the declaration to the effect that the orders dated 06.06.2006 and 21.03.2007 read with order dated 08.05.2007, 22.05.2007 and 17.12.2007 along with final order of attachment dated 18.01.2008 followed by letters dated 29.06.2012, 30.07.2012, as illegal, void and ab-initio? OPP*
>
> *2. Whether the respondents are liable to refund the excess amount lying deposited with the respondent ESIC through attachment or otherwise, along with interest @ 18% p.a.? OPP*
>
> *3. Whether the petitioner is entitled to any other relief.*

Petitioner's Evidence

20. During PE, petitioner examined Sh. V. N. Patil, Sr. Manager (Accounts)-cum-Additional Chief Accounts Officer, DTC as PW-1 and he tendered following documents in his evidence -

(i) **Ex.PW1/1 to Ex.PW1/3 (colly.)** – Copies of letters dated

08.05.2007, 21.05.2007and 17.12.2007.

(ii) **Ex.PW1/4 (colly.) –** Copy of letter 18.01.2008.

(iii) **Ex.PW1/5 (colly.)** - Copy of letter 16.01.2008.

(iv) **Ex.PW1/6 –** Copy of order dated 21.01.2008.

(v) **Ex.PW1/7 –** Copy of Letter/order dated 21.03.2007.

(vi) **Ex.PW1/8 (OSR) –** Letter dated 06.03.2009 regarding payment made to ESIC.

(vii) **Ex.PW1/9 (colly.) (OSR) –** Copy of reply dated 15.06.2012.

(viii) **Ex.PW1/10 –** Copy of letter dated 29.06.2012.

(ix) **Ex.PW1/11 & Ex.PW1/12 (colly.) –** Reminder dated 30.07.2012 and letter dated 10.08.2012.

(x) **Ex.PW1/13 & Ex.PW1/14 (colly.) –** Letter dated 03.09.2012 and reminder dated 18.09.2012.

(xi) **Ex.PW1/15 –** Copy of letter dated 15.07.2010.

(xii) **Ex.PW1/16 –** Copy of order dated 09.10.2012.

(xiii) **Ex.PW1/17 –** Copy of order dated 30.10.2012.

(xiv) **Ex.PW1/18 –** Letter of GNCTD advising the petitioner to commence the scheme.

(xv) **Ex.PW1/19 (colly.) –** The public notice/notification to private operators.

(xvi) **Ex.PW1/20 –** Copy of Contract Carriage and Special STA permits by the State Transport Authority/GNCTD bearing date of issue 15.09.1999.

(xvii) **Ex.PW1/21 –** Copy of agreement.

(xviii) **Ex.PW1/22 –** Copy of some instances, wherein the bus owner was the actual driver dated 26.12.2007.

(xix) **Ex.PW1/23 –** The list of number of individual buses engaged year-wise between the year 1996 and year 2002.

(xx) **Ex.PW1/24 (De-exhibited)** – The rate paid per kilometer as per the age of the bus.

(xxi) **Ex.PW1/25 (colly.)** Some of the sample agreements entered between the parties.

(xxii) **Ex.PW1/26 (colly.)** – Copies of letters dated 09.07.2001, 19.03.2004.

(xxiii) **Ex.PW1/27 –** Letter dated 14.06.1999 by Addl. Commissioner (Revenue) ESIC to Regional In-charge, ESI Corporation.

(xiv) **Ex.PW1/28 –** Letter of NBCC dated 08.08.2006.

(xxv) **Ex.PW1/29 –** Letter of DSIDC to DTC dted 05.12.2006.

(xxvi) **Ex.PW1/30 –** Written Submission dated 03.09.2012 of DTC.

(xxvii) **Ex.PW1/31 (De-exhibited)** – Details of ESIC contribution paid to ESIC by various Depots, year-wise and month-wise.

(xxviii) **Ex.PW1/32 (colly.) –** Copy of notice dated 06.06.2006 with enclosure.

(xxix) **Ex.PW1/33 (De-exhibited) –** Proof of year-wise statement of deposit and few such challans.

(xxx) **Ex.PW1/34 –** Copy of reply dated 22.09.2006.

(xxxi) **Ex.PW1/35 –** Letter dated 14.06.1999.

Thereafter PE was closed.

Respondent's Evidence

21. During RE, respondent examined total three witnesses i.e. Sh. S. K. Rana, Deputy Director, ESIC as RW-1, Sh. A. K. Gautam, Assistant Director, ESIC, as RW2 and Ms. Neelam Oberoi, Ex. Assistant, Director ESI Corporation as RW3.

(i) RW-1 tendered following documents in his evidence -

(a) **Ex.RW1/1 –** The inspection/verification report dated 27.04.2006 **(already exhibited as Ex.PW1/D1).**

(b) **Ex.RW1/2 –** The inspection report dated 14.02.2007.

(ii) RW-2 tendered inspection/verification report dated 23.05.2012 as **Ex.RW2/1** during his evidence.

(iii) RW-3, in addition to relying upon already exhibited documents i.e. Ex.RW1/1, Ex.RW1/2, Ex.RW2/1, Ex.PW1/10 and Ex.PW1/11, tendered the following documents:-

(a) **Ex.RW3/1 (colly.) –** Copies of notices.

(b) **Ex.RW3/2** – Copy of C-18 (notice) dated 06.06.2006 (already exhibited as Ex.PW1/32 in the testimony of PW1).

(c) **Mark XX (De-exhibited from Ex.RW3/3) –** Copy of assessment order dated 21.03.2007 (already exhibited as Ex.PW1/7 in the testimony of PW1).

(d) **Mark YY (De-exhibited from Ex.RW3/4)**- Reference to para no.4 of directions/minutes dated 21.07.2010 of high poweed committed with respect to verification of records of DTC conducted on 23.05.2012 by team of social security officers.

(e) **Mark ZZ (De-exhibited from Ex.RW3/5)** – Copy of C-19 dated 10.02.2006.

Thereafter, RE was closed.

Final arguments

22. Final arguments were heard on behalf of both the parties. Though written final arguments were filed on behalf of both the parties multiple times in this case, however, vide order dated 03.07.2026, counsels for the parties were requested to place on record consolidated written arguments, not more than 05 pages each, and it was clarified that these consolidated arguments will only be taken into consideration for passing final judgment in this case. Accordingly, both the parties placed on record consolidated final arguments.

Arguments on behalf of the Petitioner/DTC

23. During the course of final arguments, while reiterating the averments made in the petition and in written arguments, Ld. counsel for the petitioner submitted that the series of notices, orders and communications issued by ESIC between 2006 and 2012, raising demand/recovery upon petitioner are illegal, void ab initio and contrary to the scheme of the Act.

24. Ld. Counsel further submitted that a major part of initial demand of approximately Rs.19.16 crores, as indicated in show cause notice dated 06.06.2006, was concerning the drivers engaged under the Kilometer Scheme, but buses alongwith drivers were provided by private bus operators, who were paid fixed rate per kilometer and were responsible for all the expenses

pertaining to bus including maintenance, fuel, insurance and wages/salary to driver. Consequently, it is contended that contract with the private bus operators was a ‘contract for service’ and not a ‘contract of service’, and therefore, the drivers of these buses could not be treated as DTC’s employees as per section 2(9) of the Act. Similarly, it is stated that construction workers engaged by construction agencies and who carried out work outside the premises, can not be covered under the definition of employee. In support of her submissions, Ld. Counsel relied upon judgments passed by Hon’ble Supreme Court in **CESC Ltd. & Ors. vs. Subhash Chandra Boss & Ors. 1992 (1) SCC 441**, **Managing Director Hasan Co-operative Milk Producer's Society Union Ltd. vs. Assistant Regional Director Employee State Insurance Corporation, 2010 (11) SCC 537, and** Judgments/order passed by Hon'ble Delhi High Court in **Spring Dales School & Ors. Vs. Regional Provident Fund Commissioner & Anr., 2005 SCC online DEL 1457, and ESIC Vs. Green Tourist Service Pvt. Ltd, FAO 107 of 2012** to state that workers or drivers engaged and paid by independent contractors or transport operators do not become employees of the principal employer merely because their services are utilized. Ld. counsel further argued that even otherwise most operators, being single-bus owners, at times drove the buses themselves, for which no ESI contribution assessment could have been made. It is also submitted that many private bus operators did not even meet the minimum-employee threshold prescribed for ESI applicability.

25. Ld. Counsel further disputed the liability concerning construction work carried out through construction agencies, including NBCC, DSIDC, relying upon documents indicating

that such agencies were not covered by the ESI Act.

26. Ld. Counsel further argued that petitioner had already deposited approximately Rs.16.96 crores towards ESI contributions for the relevant period, including contributions relating to its regular employees and CED personnel, but ESIC failed to properly reconcile these payments and instead raised successive and substantially varying demands, ultimately reducing the demand considerably in 2012, and argued that such unexplained variations demonstrate that the assessment was arbitrary.

27. Ld. Counsel strongly contented that even otherwise, ESIC wrongly invoked Section 45A of the Act. According to Ld. counsel, Section 45A confers a limited, exceptional power of best-judgment assessment, exercisable only where an employer has failed to maintain or produce the records required under Section 44, or has obstructed an inspection under Section 45. As per Ld. Counsel, since DTC consistently maintained records, filed returns, deposited ESI contributions and permitted repeated inspections, the statutory conditions for invoking Section 45A were never satisfied, and any dispute regarding the recovery on the basis of correctness or adequacy of the records ought instead to have been raised by the ESIC before this court under section 75, within the limitation period prescribed under section 77. In support of these submissions, Ld. Counsel for petitioner principally relied upon judgment passed by Hon'ble Supreme Court's decision in **Carborundum Universal Ltd. v. ESIC Corporation, 2025 SCC ONLINE SC 2865**, wherein it was held that mere inadequacy or dissatisfaction regarding records already produced does not amount to non-production so as to attract Section 45A of the Act. Ld. Counsel submitted that the said judgment squarely applies to facts of this case, particularly since ESIC's own records establish repeated inspections and production of documents. At the end, it is requested to allow the petition.

Arguments on behalf of the Respondent/ESIC

28. Ld. counsel for the respondent submitted that the primary issue for consideration is whether the drivers engaged under the Kilometer Scheme operated by the petitioner/DTC are covered within the definition of "employee" under the Act or not. It was contended that, although DTC characterizes the arrangement for hiring buses along with drivers as a mere contract for services, the terms of the agreement Ex. PW1/25, as executed by petitioner with the private bus operators, particularly Clauses 8, 10, 16, 19 and 20, establish that DTC exercised substantial supervision and control over the manner in which the buses and drivers were required to operate, and further, the conductors deployed by DTC were clearly supervising the operation of the buses by drivers. Therefore, it is stated that the drivers supplied by the private operators fell within Section 2(9)(ii), being persons employed through an immediate employer, under the supervision of principal employer/DTC in connection with work ordinarily undertaken for the DTC establishment. Accordingly, it is submitted that DTC, being the principal employer, was statutorily liable under Sections 40 and 41 of the Act to pay the ESI contributions in the first instance, with liberty to recover the same from the immediate employer.

29. The contention of DTC that some private operators themselves drove the buses was disputed by Ld. counsel on the ground that no supporting records were produced and in the absence of such evidence, ESIC was justified in making an ad hoc assessment on the assumption that the drivers were engaged by the private operators. Similarly, DTC’s argument that some operators might have employed fewer than the statutory minimum number of workers was stated to be irrelevant by Ld. Counsel on the ground that once the petitioner, as principal employer, was covered by the ESI Act, the coverage of the employees engaged through immediate employers was to be determined with reference to the principal establishment, and the number of employees engaged by each immediate employer was not material.

30. Qua the construction workers deployed by NBCC, DSIDC, etc., Ld. counsel submitted that these workers were engaged specifically for carrying out the construction work of BQS (Bus Que Shelters), which work is connected with DTC’s establishment. Ld. counsel for respondent rejected DTC’s contention that the workers engaged through NBCC and DSIDC were outside the purview of the ESI Act merely because those agencies were themselves allegedly exempt, because, as per Ld. counsel once such workers were engaged for work connected with the petitioner’s establishment, their coverage had to be determined with reference to the petitioner’s coverage under the ESI Act. Ld. counsel therefore, submitted that since the petitioner is admittedly covered under the Act, consequently, the labour component of the payments made to such contractors for construction of BQS was liable to attract ESI contribution, with

the petitioner, being the principal employer, liable under Sections 40 and 41 of the ESI Act. In support of these submissions, Ld. counsel for the respondent relied upon judgment of Hon'ble Supreme Court passed in **ESIC Vs South India Floor Mill, AIR 1986 SC 1687.**

31. Qua CED Staff coverage, Ld. counsel submitted that these employees are covered under the ESI Act, as supported by the inspection report dated 14.02.2007 and DTC's own records. It is further contended that during the inspection conducted on 23.05.2012, DTC produced partial records showing wages of Rs.11.57 crores for 1995–2005, but failed to account for Rs.19.62 crores, and accordingly, assessment by respondent of Rs.53.51 lacs as contribution on Rs.32.93 crores paid to building agencies, treating 25% as wages, was correct.

32. With regard to the invocation of Section 45A of the ESI Act, Ld. counsel for the respondent submitted that DTC had failed to produce the requisite records despite repeated inspections, visits and notices issued by ESIC officials. It was submitted that ESIC officials had visited DTC's premises on more than ten occasions and had repeatedly called upon DTC to produce the relevant books of account and other documents necessary for determining the correct amount of ESI contribution, but despite repeated demands and opportunities over a prolonged period, DTC allegedly failed to produce the complete records, including relevant ledgers, cash books and other supporting documents. Ld. counsel for respondent therefore submitted that the present case was one of complete non-production and non-cooperation on the part of DTC, thereby

attracting the statutory power of ESIC to make an ad hoc assessment under Section 45A of the ESI Act.

33. To prove complete non-production of books of account by the petitioner, Ld. counsel for respondent heavily relied upon paragraphs 13(B) and 41(A) of its reply/WS to the petition, wherein respondent had specifically pleaded that its officials had repeatedly visited DTC's premises between 1995 and 2003 and had required DTC to produce the relevant books of account and other records. However, it is submitted that despite such specific averments with relevant dates of inspection, petitioner/DTC had not specifically and effectively denied these averments in its replication, and according to Ld. counsel, this absence of specific denial amounted to an admission of the factum of repeated inspections and the failure to produce the requisite records by petitioner. Ld. counsel for respondent also relied upon the documents tendered through RW-3 and exhibited as RW3/1 (colly.), which documents, according to ESIC, comprise notices and communications issued by its officials during their various visits between 1996 and 2003, requiring DTC to produce its books of account and other relevant records. Ld. counsel for respondent contended that the said documents, read together with the pleadings, establish that DTC was repeatedly called upon to furnish the relevant records but failed to do so. Such failure, according to Ld. counsel, provided sufficient justification for invoking section 45A of the Act and making an ad hoc assessment of the contribution payable. It is further submitted by Ld. counsel that even otherwise, as per section 101 of Indian Evidence Act, the burden of proof was upon petitioner/DTC to lead positive evidence that it did produce the record before

officials of respondent, but petitioner has failed to prove the same in evidence before this court.

34. Ld. counsel for the respondent also sought to distinguish the judgment of the Hon'ble Supreme Court in **Carborundum case (supra)**, as relied upon by the petitioner, by stating that the said judgment does not apply to the facts of the present case. According to Ld. counsel, the factual position in **Carborundum case (supra)**, was materially different because the employer therein had produced the relevant records when called upon to do so, but in the present case, initially there was non-production of requisite record from 1995 to 2003 despite repeated notices and inspections and thereafter, there was non-cooperation by producing the record in piecemeal by DTC. Ld. counsel further submitted that so far as assessment of liability qua drivers under Kilometers Scheme and construction workers provided by NBCC/DSIDC etc. is concerned, as per petitioner, these drivers/construction workers were not covered under the definition of 'employees' as per section 2(9) of the Act, therefore, petitioner was admittedly not maintaining any record qua payment made to these drivers/construction workers and therefore, there is no question of production of record qua these heads of assessment in the absence of maintenance of any such record. Accordingly, Ld. counsel contended that once it is established on record that petitioner was the principal employer qua these drivers/construction workers, the principle laid down in **Carborundum case (supra)** concerning production of records could not be invoked by DTC to challenge the assessment made by respondent under section 45A of the Act in this case, on account of non-maintenance of any such record by the petitioner.

In support of the legality of assessment made by respondent under section 45A of the Act in the present case, Ld. counsel for the respondent has relied upon judgment passed by Hon'ble Supreme Court in **CESC vs ESIC, AIR 1992 SC 573 and ESIC vs M/s F Fibre Banglore, AIR 1997 SC 2441**. At the end, it is requested to dismiss the petition.

Issue-wise Findings –

35. On the basis of material on record, my issue-wise findings are now being discussed in ensuing paragraphs.

Issue No.1 and 2

Issue No.1:-

> *Whether the plaintiff is entitled to the declaration to the effect that the orders dated 06.06.2006 and 21.03.2007 read with order dated 08.05.2007, 22.05.2007 and 17.12.2007 along with final order of attachment dated 18.01.2008 followed by letters dated 29.06.2012, 30.07.2012, as illegal, void and ab-initio? OPP*

Issue No.2:-

> *Whether the respondents are liable to refund the excess amount lying deposited with the respondent ESIC through attachment or otherwise, along with interest @ 18% p.a.? OPP*

36. Both these issues are inter-connected and involve common discussion of facts and law, and hence, these issues are being taken up together.

37. Onus to prove both these issues was on petitioner. The petitioner has filed the present petition challenging the

assessment initially raised by ESIC vide show cause notice dated 06.06.2006 Ex. PW1/32, whereby an amount of approximately Rs.19.16 crores was proposed to be recovered for the relevant period, which initial assessment was subsequently finalized under Section 45-A of the Act vide order dated 21.03.2007 Ex. PW1/7, whereby the amount was reduced to approximately Rs.9.28 crores. The petitioner has also challenged the subsequent actions of recovery made by the DTC vide various orders including the final order of attachment dated 18.01.2008 PW1/5, and the final demand letter dated 29.06.2012 PW1/10, whereby the demand was further reduced to approximately Rs.8.45 crores.

38. Though various notices/orders/communication between the parties including dated 06.06.2006, 21.03.2007, 18.01.2008, 29.06.2012, as challenged by the petitioner in this case contains various heads of assessment, however, the challenge raised by the petitioner principally concerns the liability assessed in respect of: (i) drivers engaged by private operators under the Kilometer Scheme; (ii) workers engaged through agencies/contractors for construction and repair of Bus Queue Shelters ("BQS"); and (iii) Salary paid to CED staff. In addition, the petitioner has also challenged the very invocation of Section 45-A on the ground that the statutory preconditions for exercise of that power were not satisfied.

39. At the outset, it is necessary to distinguish between the question whether a particular category of workers falls within the definition of "employee" under Section 2(9) of the Act and accordingly, whether petitioner, being the direct/principal employer, was liable to assessed for non-deposition of ESI contribution qua these employees; and the separate question whether ESIC was legally entitled to determine the contribution by resorting to the special mechanism under Section 45A of the Act. Even if a category of workers is otherwise covered under the Act, the respondent/corporation must still satisfy the statutory requirements for making an assessment under Section 45A of the Act for ESI contribution qua this category of workers. The validity of the assessment, therefore, has to be examined independently of the question of coverage.

Coverage of drivers engaged under the Kilometer Scheme

40. The first substantive question is whether the drivers engaged by private bus operators under the Kilometer Scheme fall within Section 2(9)(ii) of the Act. The relevant provisions read as under:

> *"Section 2(9) - "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and—*
> *(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or*
> *(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or*
> *(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;…………"*
>
> *"Section 2(13) "immediate employer", in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which*

this Act applies or under the supervision of the principal employer or his agent, of the whole, or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer; 2[and includes a contractor]"

41. The petitioner contended that the arrangement with the private bus operators was a "contract for service" and not a "contract of service", since the private operators were responsible for providing the buses and drivers and for meeting the expenses relating to their wages, fuel, maintenance, insurance and other operational requirements. ESIC, on the other hand, relied upon the terms of the agreement, particularly Clauses 6, 7, 8, 10, 12, 16, 19, 20 and 22(b), to contend that DTC exercised substantial supervision and control over the operation of the buses and the manner in which the drivers were required to perform their duties.

42. Firstly, in view of above highlighted definition of 'employee' and 'immediate employer', as given u/s 2(9) and 2(13) of the Act respectively, the nature of relation of the petitioner with private bus operator is not relevant i.e. whether petitioner entered into 'contract of service' or 'contract for service' with the private bus operator. What is relevant is that as to whether the private bus operators entered into contract of service with the drivers and then these drivers worked on the factory or establishment of petitioner, or under the supervision of the petitioner or his agent on work which is ordinarily part of the

work of the factory or establishment of petitioner. This is not even the contention of petitioner that the drivers employed by private bus operators were not the employees of the operators or these operators did not have contract of service with these drivers. Therefore, the court is only required to see as to whether these drivers worked on the premises of the factory or establishment, or under the supervision of the petitioner or his agent on work which is ordinarily part of the work of the factory or establishment of petitioner.

43. On consideration of the evidence, the contention of ESIC regarding coverage of the drivers merits acceptance for the reasons mentioned in the ensuing paragraphs.

44. The petitioner has placed on record the agreement individually entered by it with various private bus operators under Kilometer Scheme and same has been tendered during evidence of PW-1 as PW1/21 and Ex. PW1/25. The agreement itself demonstrates that, although the drivers were to be engaged and paid by the registered owner of the private bus, their actual deployment and functioning were substantially regulated and controlled by DTC.

45. Clause 7 of the agreement specifically stipulates that the driver of the private bus was to be provided by the registered owner at his own cost and was required to possess the prescribed licence. Clause 8(a) further required the private operator to engage two drivers on each bus in accordance with the statutory provisions. Thus, the immediate contractual engagement of the drivers was undoubtedly with the private bus operator.

46. However, the relationship for the purposes of Section 2(9) of the ESI Act cannot be determined merely by reference to the

person who formally engaged or paid the driver. The agreement has to be read as a whole to ascertain the nature and extent of DTC's control and supervision over the actual work performed by such drivers.

47. In this regard, Clause 6(b) is significant. It provides that the registered owner of the private bus was bound to abide by the orders of the Chairman-cum-Managing Director, DTC, or the officer authorised by him, in regard to the operation of the buses from time to time. More importantly, it provides that the schedule for operation and the routes on which the bus was to be utilised were to be fixed by DTC from time to time and were binding upon the registered owner. Thus, the driver, while actually operating the bus, was required to perform his duties in accordance with the operational schedule and route determined by DTC. Further, Clause 10 expressly provides that the driver supplied by the private operator was required to comply with the executive instructions applicable to the drivers of DTC. This clause is of particular significance, as it establishes that the drivers were not left to operate the buses according to the independent discretion of the private operators, but were required to conform to the operational instructions issued by DTC.

48. The degree of DTC's control is further evident from Clause 9, under which the private bus was required to be produced at a point convenient to DTC, as determined by DTC, along with the driver, from where the conductor was to be provided by DTC at its own cost. Consequently, during the actual operation of the bus under the DTC scheme, the driver and the DTC appointed conductor functioned together as part of the same bus service being operated under the directions and arrangements of DTC.

The fact that the conductor was admittedly provided by DTC assumes considerable significance, because it shows that the driver was required to work in coordination with a person directly engaged by the petitioner in the operation of the very same service. The contention raised on behalf of the petitioner that the driver did not work under the supervision or control of DTC or any of its employees and was subject exclusively to the directions of the private bus operator, therefore, cannot be accepted. Such an interpretation would lead to an anomalous and incongruous situation. The very same bus, while being operated under the DTC Kilometer Scheme, would have two essential personnel performing their respective functions under two entirely different and disconnected chains of control, namely, the driver allegedly working exclusively under the private bus operator, while the conductor, admittedly provided by DTC under Clause 9 of the agreement, worked under the control and supervision of DTC. Both the driver and conductor were required to perform their respective duties simultaneously on the same bus, on the same DTC route and as part of the same scheduled transport operation determined by DTC.

49. The agreement also subjected the drivers to various specific requirements and disciplinary consequences emanating from DTC. Under Clause 8(b) and 8(c), the private operator was required to provide the prescribed uniform to the drivers, display their photographs and particulars in the buses, and have their antecedents verified by the Police, with documentary proof to be submitted to DTC. Thus, DTC retained an institutional role even in relation to the identification and verification of the drivers who were to operate buses under its scheme. More importantly,

Clause 12 (a) provides for consequences specifically in relation to the conduct of drivers. In the event of a fatal or major accident, the driver could be removed from the bus and blacklisted from operating another private bus under the DTC Kilometer Scheme. A driver operating without a proper driving licence could result in suspension of the operation of the bus and imposition of a penalty upon the owner. Likewise, Clause 12(b) provides that in case of gross misbehaviour or irregularity committed by the driver, the agreement itself could be terminated. These provisions demonstrate that the acts and conduct of the driver were not matters exclusively within the private operator's domain; they had a direct bearing upon the continuation of the bus's operation under DTC and were subject to action within the DTC regulatory framework.

50. The same position is reinforced by Clause 25, read with the schedule of major/minor lapses/defaults. The agreement treats several acts attributable to the driver, such as disobedience of instructions issued by authorised DTC staff, misbehaviour, non-picking up of passengers, cancellation or curtailment of trips, performance of unscheduled trips, delaying the bus, off-route operation, non-stoppage at scheduled bus stops, rash and negligent driving and other activities detrimental to DTC or public interest, as contractual lapses/defaults attracting penalties and other action. The inclusion of such matters within the contractual control of DTC is a strong indication that the day-to-day performance of the driver was subject to the supervision and directions of DTC.

51. Likewise, Clause 16 requires the bus to be operated on routes determined by DTC and places responsibility upon the

private operator for ensuring that the bus stops at all scheduled bus stops. The schedule of operation, routes and adherence to scheduled stops were therefore matters dictated by DTC rather than matters left to the discretion of the private bus owner or his driver.

52. In addition, Clause 19 expressly provides that the private bus engaged under the agreement shall be for the exclusive use of DTC and shall not be diverted by the registered owner for personal use or any other business or gain during the period of its operation under DTC. The driver, therefore, was not driving the bus for an independent commercial activity of the private owner during such operation; he was performing the driving function as part of the transport service being operated under the DTC Kilometer Scheme.

53. The cumulative effect of the aforesaid provisions is that the private bus owner remained the person responsible for engaging the drivers and bearing their cost, but DTC exercised substantial supervision and operational control over the manner in which the drivers performed their duties. DTC determined the routes and schedules, required the bus and driver to report at a place specified by it, required the driver to comply with its instructions applicable to DTC drivers, operated the bus with its own conductor, regulated the driver's conduct through the contractual disciplinary mechanism, and retained the power to remove/blacklist a driver and to suspend or terminate the operation of the bus on account of defaults attributable to the driver.

54. PW-1, the petitioner's own witness, also admitted various clauses of said agreement when confronted during cross-

examination and stated that the permits for the private buses were obtained in the name of DTC and that the drivers were required to undergo police verification and furnish the requisite documents to DTC. He further admitted that under Clauses 6(b) and 10 of Ex. PW1/25, the registered owners were required to abide by the directions and orders of DTC and that the drivers were required to comply with executive instructions applicable to DTC drivers. He also admitted that under Clause 8(b), the drivers were also required to wear uniform and name plates conforming to DTC specifications.

55. Therefore, the mere fact that the drivers were recruited, paid and administratively engaged by the registered private bus owners does not, by itself, take them outside the ambit of Section 2(9) of the ESI Act and on the totality of the contractual terms and evidence, the drivers engaged by the private bus operators fell squarely within the definition of employee u/s 2(9)(ii) of the Act, which has been deliberately kept wider and includes a person employed "on the premises of the factory or establishment or under the supervision of the principal employer or his agent", where the statutory conditions are otherwise satisfied.

56. The contention of DTC that some private operators themselves drove their buses does not materially alter the position. No reliable material has been placed on record to establish the number of such operators or the precise period for which they themselves drove the buses. PW-1 also could not furnish any definite figure in this regard. Ex. PW1/22 contains some instances relied upon by DTC, but the evidence does not establish that such instances represented the entire class of persons included in the assessment and even otherwise, such

communication made by DTC with the respective private operators only after initiation of proceedings without any contemporary record, do not inspire any confidence and can not be considered for the purpose of ascertaining the liability of DTC for ESI contribution under Kilometer Scheme. Consequently, the petitioner has failed to establish that the assessment was liable to be excluded, in its entirety or to the extent claimed, on this ground.

57. Likewise, the contention that individual private operators employed fewer than the statutory number of workers cannot, by itself, defeat the claim of coverage where the workers otherwise satisfy the requirements of Section 2(9)(ii) in relation to the principal establishment. Once the petitioner, being principal employer, is covered under ESI Act, the question that the immediate employer is not covered under ESI Act because of having less than required minimum employees, is of no relevance.

58. Accordingly, on the question of substantive coverage, this Court holds that the drivers engaged through the private operators under the Kilometer Scheme fall within the scope of Section 2(9)(ii) of the Act and that DTC, as principal employer, was liable to discharge the contribution in accordance with Sections 40 and 41, subject to lawful determination of the actual contribution payable.

59. The petitioner's contention that no basis for determination of the ESI contribution in respect of the drivers engaged under the Kilometer Scheme was disclosed by the respondent, is liable to be rejected. The basis of such assessment was specifically set out by the respondent in the initial show-cause notice dated

06.06.2006 Ex. PW1/32 and was also recorded in the inspection visit note dated 14.02.2007 Ex. RW1/2. The assessment, initially quantified at approximately Rs. 6.5 crores in the order dated 21.03.2007 PW1/7, was retained at the same figure in the subsequent communication dated 29.06.2012 Ex. PW1/10. The reduction from the amount originally proposed in the show-cause notice dated 06.06.2006 was on account of exclusion of the assessment pertaining to one cleaner after who had initially been included for the purpose of computation, as reflected in visit note dated 14.02.2007 Ex. RW1/2 ((on account of reverification of record) and finally in order dated 21.03.2007 Ex. PW1/7. The petitioner, however, has failed to demonstrate, either from the material on record or otherwise, any specific infirmity in the methodology adopted by the respondent for quantifying the ESI contribution liability in respect of the said drivers.

Coverage of construction workers engaged through NBCC/DSIDC/other agencies

60. The petitioner has also challenged the assessment relating to workers engaged through NBCC, DSIDC and other agencies for construction, repair and maintenance of BQS and other works connected with DTC's establishments. The principal contention of DTC is that the concerned agencies were outside the coverage of the ESI Act and, consequently, the workers engaged by them were also not liable to be covered.

61. This contention cannot be accepted in the manner advanced by the petitioner. PW-1 admitted that an amount of approximately Rs.32.93 crores had been paid to outside agencies/contractors in respect of building, repair and construction works relating to BQS. More importantly, the

petitioner itself relied upon notification dated 14.06.1999, Ex. PW1/27. PW-1 further admitted that said notification dated 14.06.1999 applicable to construction agencies, is not applicable to DTC. The said notification, while dealing with construction workers otherwise falling within its terms, specifically contemplates coverage under clause 3 where such workers are engaged directly in a covered factory or establishment by the principal employer through an immediate employer.

62. When PW-1 was asked as to whether it is correct that when repair and maintenance and construction is undertaken by a covered unit, it is liable to ensure coverage of construction workers, he stated that since the repair and construction work was carried out outside the covered factory, hence this proposition is not applicable on them. But PW-1 specifically admitted that the construction and repair activities in question carried out outside the depots of DTC were connected with DTC's depots and establishments.

63. Therefore, the fact that the work was executed through an outside agency does not, by itself, sever the statutory connection between the work and the principal establishment. Here the work of construction of BQS directly pertained to establishment of petitioner. Hence, insofar as the concerned construction workers were engaged through contractors, for work connected with the covered establishment of DTC, they would fall within the scope of Section 2(9) of the Act and DTC, as principal employer, would be liable for contribution in accordance with Sections 40 and 41, subject to proper determination of the wage component and the actual contribution payable.

64. Therefore, no fault can be found with the assessment of

contribution as prepared by ESIC on Rs.32.93 crore paid to building agencies, applying 25% as wages, amounting to approximately Rs.53.51 lacs (as indicated in initial assessment order dated 21.03.2007 Ex. PW1/7 and which remained same in their final communication dated 29.06.2012 Ex. PW1/10).

Assessment Qua CED Staff Salary

65. As regards CED staff salary, DTC contended that ESI contributions had already been paid in respect of covered employees, including CED staff, during 1994–95 to 2004–05. It relied upon available wage records for covered staff and separately identified Rs.8.62 crore as wages of CED staff not covered under the Scheme. ESIC, however, maintained that CED employees were coverable and relied upon the inspection report/visit note dated 14.02.2007 Ex RW1/2, as per which the DTC paid approx. 31.20 Crore as salary/wages to CED Staff and accordingly, contribution assessment @6.50 percent of aforesaid payment amounting to approx. Rs. 2.02 Crore was made in order dated 21.03.2007 Ex. PW1/7. As per ESIC, during inspection in May 2012, DTC produced records of 26 depots showing wages of Rs.11.57 crore, but failed to produce records for Rs.19.62 crore. As per ESIC, it accordingly reduced the assessment on account of production of record and kept it at approx. 1.27 crores to the extent of unexplained wages of Rs. 19.62 Crore vide its communication dated 29.06.2012 Ex. PW1/10.

66. In this regard, the petitioner's own witness PW-1 has admitted that the total salary paid to CED staff during the relevant period was Rs.31,20,48,000/-. It is also not disputed by the PW-1 that, during the re-verification conducted on 23.05.2012, the petitioner could produce records relating only to the extent of approx. Rs. 11.92 Crores. PW-1 further admitted that, as recorded in the re-verification proceedings, out of total 44 depots, records pertaining to only 26 depots were actually produced before the inspection team. Significantly, when confronted with the difference of Rs.19.62 Crores, PW-1 could not demonstrate that the corresponding underlying salary/wage records had been produced before the inspecting team on 23.05.2012. Rather, the witness explained that records relating to CED employees covered under ESI, amounting to approximately Rs.11.92 crore, were shown to the inspection team, whereas the remaining figure relating to the uncovered CED staff, stated to be approximately Rs.8.62 crore, was subsequently forwarded to ESIC vide DTC's letter dated 15.06.2012 Ex. PW1/9. However, a perusal of Ex.PW1/9, insofar as it relates to CED staff, shows that the petitioner merely furnished, in Annexure-C, depot-wise consolidated figures of salary/wages allegedly paid to CED staff, aggregating to approximately Rs.8.62 crores. No supporting wage registers, individual employee-wise particulars, or other primary records were furnished to establish the identity of the employees concerned, the wages paid to them, which could have disclosed as to whether these employees were covered under the Act or not. Therefore, merely forwarding such details without any supporting record, while pleading that the records of certain depots had been shifted to the old-record section or were otherwise not available, is insufficient to support the contention of the petitioner that the assessment made by ESIC was not proper and against the record produced.

Invocation of Section 45A by Respondent/ESIC

67. The above finding regarding coverage, however, does not

conclude the present petition. The principal question which now arises is whether ESIC was legally competent, in the facts of the present case, to invoke Section 45A and make an ad hoc assessment and then to initiate recovery proceedings against the petitioner as per section 45C of the Act vide attachment order dated 18.01.2008 Ex. PW1/5.

68. At the outset, it would be apt to reproduce section 45A of the Act and same is as under –

> "***45A. Determination of contributions in certain cases.*** *(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Social Security Officer or other official of the Corporation referred to in sub-section (2) of section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:*
>
> *Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard:*
>
> *Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.*

(2)An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B or the recovery under sections 45C to 45-I"

69. Section 45A of the Act confers a special power upon the corporation to determine the amount of contributions payable where the statutory conditions prescribed therein are satisfied. Such power is not an unrestricted substitute for the ordinary adjudicatory mechanism. The corporation must first establish the factual foundation necessary for exercise of that special jurisdiction. Perusal of section 45 A of the Act reveals that the before invoking power under this section to make ad hoc assessment, the respondent/corporation/ESIC is required to show that either no returns, particulars, registers or records were submitted, furnished or maintained in accordance with the provisions of section 44 by the petitioner/DTC or any of its Social Security Officer or other official was prevented in any manner by the petitioner, in exercising his functions or discharging his duties under section 45.

70. In this regard, the judgment of the Hon'ble Supreme Court relied upon by the petitioner in **Carborundum case (supra),** assumes significance. The principle relied upon by the petitioner is that to justify the invocation of section 45A, the respondent was required to establish that there was no production of any record at all by the petitioner/DTC and the special power under Section 45A of the Act cannot be invoked merely because the respondent/ESIC finds the records produced by an employer to

be incomplete, inadequate, discrepant or otherwise unsatisfactory.

71. The distinction is important. There is a material difference between a case of complete non-production of the requisite records and a case where records have been produced but the corporation/ESIC considers them insufficient or does not accept the particulars contained therein. In the latter situation, the corporation/ESIC cannot bypass the statutory scheme merely because verification of the records may be inconvenient or time-consuming.

72. In the present case, ESIC relied principally upon the allegation that its officials had repeatedly visited DTC between 1995 and 2003 but DTC failed to produce the requisite books of account and other records. Reliance has also been placed upon paragraphs 13(B) and 41(A) of the reply/written statement, wherein the factum of inspecting the premises of petitioner by respondent's officials for more than 10 times by aforesaid officials has been mentioned. As per Ld. counsel for respondent, petitioner, in its replication, has not specifically denied the contents of aforesaid para 13(B) and 41(A) of reply/WS of respondent. Therefore, Ld. counsel contended that this non-traversal coupled with Ex. RW3/1 (colly.), consisting of notices/communications allegedly issued during such visits, establish the factum of non-production of record very clearly.

73. At the outset, the mere fact that the petitioner may not have specifically traversed each and every factual assertion contained in the written statement cannot, by itself, dispense with the obligation of the respondent/ESIC to establish the statutory foundation for exercise of the special power under Section 45A

of the Act. The alleged non-traversal, in the present case, is essentially with respect to the assertion that the officials of the respondent had conducted inspections on several occasions. However, the mere factum of repeated visits or inspections is not determinative. What is required to be established is whether, during such inspections, the petitioner had completely failed to furnish or maintain the returns, particulars, registers or records contemplated under Section 44 of the Act, so as to attract the jurisdictional conditions stipulated in Section 45A.

74. On this aspect, the evidence led by the respondent does not establish that there was complete non-production of records by the petitioner. Significantly, none of the officials who allegedly conducted the inspections during the period from 1995 to 2003 has been examined by the respondent to establish what records were specifically called for, what records were produced, what records allegedly remained unproduced, and in what circumstances such non-production occurred. RW-3, Ms. Neelam Oberoi, who tendered Ex. RW3/1 (colly.), was confronted with the specific dates of twelve inspections between 1995 and 2003, as pleaded by the respondent in its written statement/reply. She categorically admitted that she had neither personally visited the DTC premises on those dates nor participated in any inspection of the petitioner's premises at any point of time. Her testimony, therefore, cannot establish from personal knowledge the circumstances in which those inspections were conducted or the precise extent of records allegedly not produced by the petitioner. Consequently, by mere exhibition of documents Ex. RW3/1 (colly), it can not be said that the respondent has proved the same as per law.

75. Moreover, Ex. RW3/1 (colly.) comprises various notices and communications issued by the respondent and does not contain the contemporaneous inspection reports prepared by the officers who allegedly conducted the inspections in question. The evidentiary value of these documents is further weakened by the fact that some of them are incomplete or unsigned. They, therefore, cannot be treated as substantive proof of the alleged circumstances of inspection or non-production of records. At the same time, since these documents have themselves been relied upon and produced by the respondent, therefore, as per Section 21 of the Indian Evidence Act, these documents can atleast be read against the respondent.

76. In this regard, the communication dated 18.07.2003 forming part of Ex. RW3/1 (colly.) assumes considerable significance. The said communication made between officials of respondent specifically records that the petitioner had furnished its balance sheet and profit and loss account for the year 2001-2002. This documentary admission of the respondent is plainly inconsistent with its subsequent assertion that the petitioner had not produced its books of account during the inspections conducted prior to 2006.

77. More importantly, the respondent's own witness and documentary evidence establish that the present case was not one of complete non-production of records. The inspection/verification report dated 27.04.2006, Ex. RW1/1, tendered by RW-1, records that the petitioner had furnished, inter alia, the balance sheet for April 2004 to March 2005, ledgers for April 2000 to March 2002 and details of payments made to contractors for May 2003 to March 2005. Significantly, even this

inspection/verification report does not identify with precision the particular records allegedly demanded from the petitioner but not produced, nor does it specify the relevant period to which such allegedly unproduced records pertained. In the absence of such particulars, the broad assertion of complete non-production cannot be accepted merely on the basis of general notices or communications.

78. This assumes further significance in the context of the petitioner's contention that the assessment under Section 45A was initiated beyond the permissible period in respect of the Kilometer Scheme, which admittedly remained operational during the relevant period from 1996 to 2003. In response, Ld. counsel for the respondent contended that the respondent remained unaware of the Kilometer Scheme because the petitioner had never produced its books of account despite multiple inspection visits from 1996 to 2003. Ld. Counsel further submitted that respondent’s officials came to know about the Kilometer Scheme run by the petitioner for the first time only during the visit on 27.04.2006, when the petitioner for the first time produced the books of account, and the official of respondent, by looking at the balance sheet, came to know running of kilometer scheme by the petitioner during the relevant period. Hence, as per Ld. Counsel for respondent, before 27.04.2006, there was no occasion for the respondent to make any assessment particularly qua the drivers engaged under Kilometer Scheme.

79. The aforesaid explanation of the respondent, however, is contrary to its own documentary evidence. As noticed above, the respondent's communication dated 18.07.2003, forming part of

Ex. RW3/1 (colly.), expressly records that the petitioner had furnished its balance sheet and profit and loss account for the year 2001-2002. The Kilometer Scheme was admittedly operational during that period. Thus, the respondent's assertion that it came to know of the Scheme for the first time only upon the production of the books of account on 27.04.2006 is not borne out from the record.

80. Further, if the respondent's case is that the petitioner repeatedly failed to produce its records during inspections conducted over several years, the most material evidence in support of such assertion would necessarily have been the contemporaneous inspection reports, accompanied by the relevant official notings, prepared by the inspecting officers themselves. Such reports would have disclosed the date and nature of each inspection, the officers who conducted it, the records specifically demanded, the records actually produced, and the records allegedly withheld. No such detailed inspection reports or corresponding official notings of the inspecting officers have been brought on record. This omission assumes greater significance because the respondent claims to have conducted repeated inspections over a prolonged period.

81. It is also noteworthy that, despite the respondent's assertion that its officials had been conducting inspections at the premises of the petitioner/DTC over a prolonged period of nearly 8–10 years and that the petitioner had consistently failed to produce the requisite records, the respondent did not take any effective action against the petitioner for such alleged non-compliance. Apart from issuing certain notices, forming part of Ex. RW3/1 (colly.), calling upon the petitioner to produce the

records and warning of prosecution under Section 85 of the Act in the event of non-compliance, no proceedings appear to have been initiated against the petitioner for the alleged persistent failure to produce the records. This conduct of the respondent is difficult to reconcile with its present assertion of complete and continuous non-production of records by the petitioner throughout the said period.

82. Thus, the assertion of the respondent that the petitioner had completely failed to produce its records is not reconcilable with the respondent's own documentary evidence. On the contrary, the material placed on record establishes that the petitioner had produced records on various occasions, though the respondent may have considered such records incomplete or insufficient for determining the exact contribution liability.

83. This is further demonstrated by the inspection/verification report dated 27.04.2006, Ex. RW1/1, which admittedly records production of at least partial records by the petitioner, including the balance sheet for April 2004 to March 2005, ledgers for April 2000 to March 2002 and contractor-payment details for May 2003 to March 2005. In these circumstances, the justification for issuing the show-cause notice dated 06.06.2006 Ex. PW1/32, proposing an assessment of approximately Rs.19.16 crores, has not been satisfactorily explained, particularly when the respondent itself was already in possession of material records produced by the petitioner.

84. The subsequent course of proceedings is even more significant. After issuance of the show-cause notice dated 06.06.2006, the officials of the respondent again visited the petitioner's premises on 14.02.2007, and a verification

report/visit note dated 14.02.2007, Ex. RW1/2, was prepared. During this further verification, additional records were produced by the petitioner. Upon considering the material so produced, the respondent substantially reduced the proposed liability from approximately Rs.19.16 crores, as reflected in the initial show-cause notice, to approximately Rs.9.28 crores in the assessment order dated 21.03.2007 Ex. PW1/7. Such substantial reduction cannot be reconciled with a case of absolute or complete non-production of records. Rather, it demonstrates that further material was produced by the petitioner and was actually examined and taken into account by the respondent while determining the liability.

85. Therefore, on an overall consideration of the evidence, it is clear that, prior to passing the assessment order dated 21.03.2007 Ex. PW1/7, the petitioner had produced at least part of the relevant records and such records had been considered by the respondent. This finding is sufficient for determination of the present issue. It is not even necessary to take into account, for this purpose, the additional records subsequently produced by the petitioner, which resulted in a further reduction of the assessed liability from approximately Rs.9.28 crores under the order dated 21.03.2007 Ex. PW1/7 to approximately Rs.8.45 crores under the subsequent communication dated 29.06.2012 Ex. PW1/10. The admitted fact of partial production of records before the first assessment itself demonstrates that the present case was not one of complete non-production of records.

86. The distinction between complete non-production or non-maintenance of records, and production of records which are considered incomplete, inadequate or insufficient, is material for

the purposes of Section 45A. The power under Section 45A is not an unrestricted or general power of assessment. It becomes available only upon satisfaction of the statutory conditions prescribed therein, regarding non-submission, non-furnishing or non-maintenance of the prescribed records, or obstruction of inspection under Section 45. The Supreme Court in **Carborundum case (supra)**, has clearly held that mere inadequacy or insufficiency of records, where records have in fact been produced and inspection has not been obstructed, cannot by itself convert the case into one falling within the exceptional jurisdiction of Section 45A of the Act.

87. Consequently, even if the records produced by the petitioner were considered incomplete, inadequate or insufficient by the respondent for determining the exact contribution liability, that circumstance, by itself, could not satisfy the statutory precondition for invoking Section 45A of the Act. The respondent was required to establish that the case fell within one of the contingencies expressly contemplated by the provision. In the facts of the present case, the evidence does not establish complete non-production nor does it establish obstruction of inspection. Rather, the material on record demonstrates repeated production of records, further production during subsequent verification, and consequential reduction of the proposed liability.

88. In such circumstances, the respondent could, if otherwise permissible in law, undertake further verification and pursue the contribution claim through the ordinary statutory mechanism under Sections 75 read with section 77 of the Act. Section 45A could not, however, be invoked merely because the records

produced by the petitioner did not, in the opinion of the respondent, furnish complete particulars or permit an exact determination of contribution. The respondent, therefore, erred in treating a case of partial or incomplete production of records as one of complete non-production and in consequently assuming jurisdiction under Section 45A.

89. Ld. counsel for respondent has also tried to raise another argument to the effect that there has been continuous non-cooperation on the part of petitioner by initially not producing the record and then producing the record only in piecemeal, which tantamount prevention/obstruction, satisfying atleast the second alternate condition for invoking section 45A of the Act. However, in view of ratio of Hon'ble Supreme Court in Carborundum case (supra), to meet the second alternate condition regarding prevention/obstruction of officials of respondent/corporation in the discharge of their statutory functions, the obstruction has to be confined to physical obstacle, use of force, or threatened use of force and as excluding a mere failure to comply with any direction. There is no evidence that DTC physically obstructed, prevented or interfered with the inspection or discharge of statutory functions by ESIC officers. The respondent's case, even as advanced during final arguments, is essentially that DTC failed to furnish the records demanded by it. Such alleged non-cooperation, without more, cannot be treated as physical obstruction so as to constitute the second alternate statutory ground for invoking Section 45A.

90. In these circumstances, this Court is of the considered view that the respondent has failed to establish either of the factual foundations relied upon for invoking the special power

under Section 45-A. The material on record neither establish complete non-production of records by DTC nor establish that any physical obstruction was caused to ESIC officials in discharge of their statutory functions of.

91. One further alternative contention raised by Ld. counsel for the respondent only during the course of final arguments is that, even if the assessment under section 45A of the Act is not sustained in respect of all the heads, its invocation was, at least, justified with regard to two substantial components, namely, the liability pertaining to the drivers under Kilometre Scheme and construction work of BQS carried out through construction agencies. It is submitted that, in respect of these two heads, the petitioner admittedly did not maintain any separate wage records concerning the drivers or construction workers and, therefore, the question of production of such records did not arise.

92. As regards the Kilometre Scheme, Ld. counsel for the respondent submitted that the petitioner's own case is that the drivers were engaged by private bus operators, worked under their direction and supervision, and were paid by the operators, while DTC merely made payments to such operators at a fixed rate per kilometre. Since DTC disputed that these drivers were its employees within the meaning of the Act, it did not maintain separate wage records in respect of them. Similarly, with regard to construction of BQS through agencies such as NBCC and DSIDC, it is submitted that the petitioner itself disputes liability on the ground that the construction workers were employees of the respective construction agencies and not of DTC, and that the agencies/workers were otherwise covered by the exemption/position reflected in the notification dated 14.06.1999.

Thus, according to Ld. Counsel for the respondent, DTC cannot simultaneously rely upon non-production of wage records when it admittedly maintained no such records.

93. On this basis, learned counsel for the respondent contends that the absence of any wage records in respect of these two heads constituted non-maintenance of records warranting recourse to Section 45A. It is further submitted that, applying the doctrine of severability, the assessment under these heads may independently be sustained even if the assessment under other heads is held unsustainable.

94. The alternative contention raised by Ld. counsel for the respondent also cannot be accepted. Firstly, Ld. counsel for the petitioner has not been able to point out any statutory provision or judicial precedent which would justify applying the doctrine of severability to an assessment order passed under Section 45A of the Act, so as to examine the legality of individual heads of liability separately and, in the case of a single consolidated order, uphold the order in respect of some heads while declaring it invalid in respect of others.

95. On merits of the contention, it is true that Section 45A of the Act contemplates, inter alia, a situation where the returns, particulars, registers or records required under Section 44 have not been submitted, furnished or maintained. Thus, non-maintenance of the statutorily prescribed records may, in an appropriate case, constitute an independent jurisdictional ground for exercise of power under Section 45A of the Act. However, the mere absence of a particular wage record cannot, by itself, be equated with non-maintenance of records within the meaning of Section 44.

96. In the present case, the petitioner had not suppressed the underlying transactions relating either to the Kilometer Scheme or to the construction work undertaken through outside agencies. In respect of the Kilometer Scheme, the petitioner maintained records concerning the private bus operators, the buses operated, the agreements entered into with such operators and the payments made to them. Likewise, in respect of construction work, the payments made to the concerned construction agencies were accounted for and were available for examination. The petitioner did not maintain separate wage records in respect of the drivers and construction workers principally because its consistent case was that such persons were not its employees within the meaning of Section 2(9) of the Act and that the liability, if any, was to be determined with reference to the private operators/immediate employers/agencies concerned. Whether that legal position was ultimately correct or not is a separate question on merits and cannot, by itself, establish that the petitioner had failed to maintain the records required under Section 44.

97. The distinction between non-maintenance and inadequacy of records is of particular significance in view of the law declared by the Hon'ble Supreme Court in *Carborandum case (supra)*. In the present case, the material available with the respondent was sufficient, at least, to identify the underlying transactions and to make an assessment of the alleged liability on the basis of the payments made to private bus operators and construction agencies. The respondent did, in fact, undertake such computation and quantified the liability under these heads. The case, therefore, was not one where the petitioner had failed to

maintain or account for the underlying operations so as to render determination of liability impossible. The real dispute was whether the persons whose wages were sought to be brought to contribution were employees of the petitioner within Section 2(9), including whether the drivers engaged through private operators were working under the supervision of the petitioner and whether the construction workers engaged through outside agencies fell within the statutory scheme. Such questions involved determination of the substantive liability and merely because the petitioner had not maintained separate wage records treating those persons as its employees, the same could not furnish the jurisdictional foundation for Section 45A.

98. Accordingly, although the respondent was entitled to examine the available records and determine, on merits, whether contribution was payable in respect of these categories, the absence of separate wage records for such persons, in the peculiar facts of the present case, did not establish non-maintenance of the records required under Section 44 so as to attract Section 45A of the Act. The respondent's alternative contention is, therefore, rejected.

Conclusion

99. It is, therefore, held that although the drivers engaged through private operators under the Kilometer Scheme and the construction workers engaged through contractors for work connected with DTC's covered establishments were, in principle, coverable under Section 2(9) of the Act, the assessment of the contribution payable in respect thereof could not have been made by ESIC under Section 45A of the Act in the facts established on record. The same conclusion applies to the component of the

assessment relating to CED staff. Whatever may be the underlying question of coverage of particular categories of CED personnel of the petitioner, ESIC was required to determine the actual contribution on the basis of a legally sustainable assessment. In the absence of valid invocation of Section 45A, the impugned assessment cannot be sustained.

100. At this stage, it is also relevant to note that the initial assessment order dated 21.03.2007 Ex. PW1/7, passed under Section 45A of the Act, determined the petitioner's liability towards ESI contribution under several distinct heads, which position was carried forward in the subsequent/final communication dated 29.06.2012 Ex. PW1/10. However, during the course of arguments, Ld. counsel appearing for both parties jointly submitted that the issue relating to ESI contribution under two specific heads, namely, salary paid to drivers through outsourced agencies and incentives paid to drivers for the period from April 2004 to May 2005, as reflected at Serial Nos. 7 and 8 of the tabulated statement forming part of Ex. PW1/10, had already been settled between the parties. It was, therefore, jointly submitted that the said settlement may not be disturbed while adjudicating the present petition.

101. It was further jointly submitted by Ld. counsel for both parties that, pursuant to the assessment order dated 21.03.2007 Ex. PW1/7, the respondent has already effected recovery of a total amount of Rs. 47.21 lakhs from the petitioner. Accordingly, it is jointly submitted that the aforesaid recovery of only Rs. 47.21 lakhs already effected is required to be taken note of at the time of adjudication in the present proceedings, as the remaining recovery of approx. Rs. 1.17 Crores from the petitioner by the

respondent, though mentioned in the petition, need not be taken into account in this case, as it pertained to separate earlier proceedings initiated by respondent against the petitioner. Ld. Counsel for petitioner additionally submitted that issue of Rs. 27.27 lakhs as excess charged by ESIC against M/s Eye Bird Placement services private limited may also be left to be dealt between the parties on their own, on account of assurance by respondent for adjustment of said amount vide its letter/communication dated 15.07.2010 Ex. PW1/15

102. In view of aforesaid analysis and submission of parties, the assessment order dated 21.03.2007 Ex. PW1/7 passed under Section 45A of the Act, as well as the consequential recovery proceedings founded upon the said assessment, including attachment order dated 18.01.2008 PW1/5 and the other demands/communications/notices including communication dated 29.06.2012 PW1/10, cannot be sustained in law to the extent they arise from and give effect to the impugned section 45A assessment, and same are declared illegal and set aside qua all heads indicated under these assessments/demands/communication/notices except the two specific heads, namely, salary paid to drivers through outsourced agencies and incentives paid to drivers for the period from April 2004 to May 2005, as reflected at Serial Nos. 7 and 8 of the tabulated statement forming part of Ex. PW1/10.

103. Once the foundational assessment under Section 45A itself is found to be unsustainable, the consequential amounts of Rs. 47.21 lacs, as recovered by the respondent from the petitioner pursuant to the impugned assessment cannot be retained by ESIC merely on the strength of those proceedings. The petitioner is,

therefore, entitled to refund of the aforesaid amounts of Rs. 47.21 lacs from the respondent.

104. The petitioner has also prayed for interest at the rate of 18% per annum on the amount directed to be refunded. The said prayer, however, cannot be accepted merely on the basis of the rate claimed by the petitioner. The Court is required to examine whether there exists any statutory or other legally sustainable basis for awarding interest at the claimed rate.

105. In this regard, In this regard, reference may be made to section 45AA of the Act and Regulations 31-A and 31-E of the The ESI (General) Regulations, 1950 which read as under -

> **"Section 45AA Appellate authority - If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the corporation:**
>
> ***Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation"***
>
> ***"Regulation 31A. Interest on contribution due, but not paid in time -*** *An employer who fails to pay contribution within the periods specified in regulation 31, shall be liable to pay simple interest at the rate of twelve per cent per annum in respect of each day of default or delay in payment of contribution."*
>
> ***"Regulation 31E. Interest on amounts refunded to***

the employer-- *If an employer finally succeeds in the appeal under section 45AA, the amount deposited by him with the Corporation, in full or part, as per decision of the Appellate Authority, shall be refunded to him along with simple interest at the rate specified in regulation 31A."*

106. A conjoint reading of the aforesaid provisions makes it clear that Regulation 31A operates in favour of the Corporation, by providing for interest where an employer defaults in payment of contribution within the prescribed period. On the other hand, Section 45AA read with Regulation 31E specifically provides for payment of interest by the Corporation to an employer in respect of the amount deposited by him, where he finally succeeds in an appeal under Section 45AA. Thus, the statutory scheme expressly contemplates payment of interest to an employer in the circumstances specified therein.

107. Though, only Appellate Authority has been specifically empowered to order interest u/s 45AA and no such specific provision for grant of interest has been made empowering this court in case petition against order u/s 45A is instituted before this court u/s 76 of the Act, however, assuming that this court also has similar power to grant interest, it is significant to note that Section 45AA was introduced in the Act with effect from 01.06.2010, while Regulation 31E was subsequently introduced with effect from 01.01.2011. Consequently, at the time when the recovery in the present case was effected, i.e. in the year 2008, neither Section 45AA nor Regulation 31-E was in force. The statutory mechanism subsequently introduced for refund of the amount deposited by an employer, together with interest, therefore, cannot be invoked retrospectively in respect of a

recovery which had already been effected prior to their coming into force. Accordingly, the prayer of the petitioner for award of pre-institution interest or pendente lite interest is declined.

108. In view of the foregoing discussion, both the issue no.1 and issue no. 2 are decided in favour of the petitioner to the extent indicated hereinabove.

Issue no. 3 : *Whether the petitioner is entitled to any other relief?*

109. No other relief was either asked for by the petitioner, nor arises in the facts of present case. Accordingly, this issue is decided against the petitioner.

Final Relief

110. In view of findings of this court on issue no. 1 & 2, the petition of the petitioner is partly allowed and the assessment order dated 21.03.2007 Ex. PW1/7 passed under Section 45A of the Act by respondent, as well as the consequential recovery proceedings founded upon the said assessment, including attachment order dated 18.01.2008 PW1/5 and the other demands/communications/notices including communication dated 29.06.2012 PW1/10 of respondent, cannot be sustained in law to the extent they arise from and give effect to the impugned section 45A assessment, and same are declared illegal and set aside qua all heads indicated under these assessments/demands/communication/notices except the two specific heads, namely, salary paid to drivers through outsourced agencies and incentives paid to drivers for the period from April 2004 to May 2005, as reflected at Serial Nos. 7 and 8 of the tabulated statement forming part of Ex. PW1/10.

111. Consequently, the petitioner is entitled to refund of the amounts of Rs. 47.21 lacs from the respondent, which was

recovered by respondent from petitioner during the recovery proceedings carried out by respondent in pursuance of order dated 21.03.2007 Ex. PW1/7. Accordingly, the respondent is directed to refund the said amount of Rs. 47.21 lakhs to the petitioner within a period of two months from the date of this order. In the event the respondent fails to make the payment within the aforesaid period, the unpaid amount shall carry simple interest at the rate of 6% per annum for the period of such delay, commencing from the expiry of two months from the date of this order until the date of actual payment.

112. No orders as to cost.

Announced in the open court
on this 14th Day of August, 2026

Gopal Krishan
Digitally signed by Gopal Krishan
Date: 2026.08.14 17:38:23 +0530

(GOPAL KRISHAN)
EMPLOYEES' INSURANCE COURT
(CENTRAL DISTRICT)
TIS HAZARI COURTS/DELHI