

EMPLOYEES STATE INSURANCE CORPORATION
'PANCHDEEP BHAWAN', C.I.G ROAD, NEW DLEHI - 110 002.

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No.P-12(11)-11/83/05-Rev.II

Dated : October, 2007

The Regional Directors
Directors/Joint Directors I/c
ESI Corporation
Regional Offices/Sub-Regional Offices

Subject : Coverage of workers engaged by the outside agencies / Job Contractors in connection with the work of the principal employer outside the premises – regarding.

Sir,

A reference is invited to Hqrs.' Office letter No.P-12/11/51/9/2000-Rev.II dated 26.08.2005 on the above subject. Attention of the Regional Directors /Joint Directors I/c of Sub-Regional Offices is also invited to Hqrs.' Office letter of even No. dated 17.08.2006 wherein the recommendations of the Committee of Senior Officers on the same subject were communicated. In these instructions, the supervision aspect by the Principal Employer or by his agent on outsourcing job works while claiming the contribution was elaborated.

The Hqrs.' Office has again received a number of representations from the different Associations of Employers, Export Bodies of Employers and individual Employers from various Regions expressing the difficulties faced by them in covering the employees engaged by them through immediate employers / contractors on jobs outsourced.

Recently, the Hon'ble High Courts of Madras, Madhya Pradesh and Karnataka have given their judgements in the following cases in which the aspect of supervision has been discussed in the light of the judgement of the Hon'ble Supreme Court in the case of CESC and others Vs. Subhash Chandra Bose & others (AIR 1992-SC Page 573 (1992) 1 SCC 441):-

1. Hon'ble High Court of Madras vide its judgement dated 24.7.2007 in CMA (NPD) No.1765 of 1999 between ESI Corporation V/s. Bethall Engineering Company.
2. Hon'ble High Court of Madhya Pradesh vide its judgement dated 15.3.2007 in MA No.606/2003 between National India Rubber Works Ltd. V/s. ESI Corporation
3. Hon'ble High Court of Karnataka vide its judgement dated 15.7.2006 in MFA No.1089/2001 between ESIC V/s. JMD Fashions.

Keeping in view the representations received from the employers, their associations as well as the judgements referred above, the matter has been re-examined in its entirety. The Hqrs.' Office had issued instructions to all Regional Directors/Joint Directors I/c of Sub-Regional Offices vide letter of even No.

dated 05.07.2007 advising them to withhold the actions in respect of employers who have outsourced the jobs to the Contractors/Immediate Employers. The matter was therefore, reconsidered in depth at Hqrs.' Office and it was decided to undertake field study by Two Teams of Officers for ascertaining prevalent situations, interacting with individual Employers as well as with Employers' Associations at prominent centres. These Teams were also advised to ascertain the pattern of outsourcing in different industries and to ascertain the element of supervision involved in the jobs outsourced. The Teams of Officers have studied field situations as well as has held extensive discussions with individual Employers and various Employers' Associations and has submitted their detailed report. They have brought out broad categories of workers engaged by the Job Contractors/Immediate Employers. The reports of those Officers have been examined in Hqrs.' Office threadbare and it is revealed that the jobs outsourced are falling in the following categories. The following guidelines are being issued to handle different categories of cases falling in various categories:-

A. A. The Jobwork done inside the factory/establishment premises through Contractors/Immediate Employers having independent Code Nos. :

Under this category, the contribution is not to be claimed from the Principal Employer in respect of the employees of the Job Contractors / Immediate Employers who are independently covered. In this category the supervision is implied. However, at the time of inspection, the Insurance Inspector should verify the records of the Principal Employer in respect of Contractors/Immediate Employers required to be maintained by the Principal Employers, according to the provisions of Section 41 (1 A) and Regulation 32 (1) (a). The Revenue Branch Officers should keep this aspect in view while passing 45-A order.

B. B. Jobwork done inside the factory premises through Contractors/Immediate Employers not having independent Code Nos.:

The employees of the Job Contractors/ Immediate Employers who are not having independent Code Nos., but working in the factory/establishment of the Principal Employer are coverable and the compliance is to be made by the Principal Employer. Under this category supervision is implied. The compliance is to be made by the Principal Employer in respect of coverable workers of the Contractors/Immediate Employers. The Insurance Inspectors should verify the records maintained by the Principal Employer in respect of Contractors who are not having independent Code Nos. The Revenue Branch Officers should keep this in view at the time of passing 45-A order.

C. C. Jobwork done outside the factory/establishment premises through factories/establishments which are having independent Code Nos.:

Under this category, the compliance is to be made by the factories / establishments having separate Code Nos. Supervision by Principal Employer is not involved under this category. The Insurance Inspector should ensure the quantum of the work done by the outside factories/establishments independently covered with reference to the Gate Passes, Return Gate Passes, Challans and bills, etc., prepared for sending the material outside the Principal Employer's factory/establishment and returning back after the job work. The Principal Employer is required to keep the Code Number of such factories / establishments from which he gets the job work done. The Insurance Inspector shall bring these information in his report and the Revenue

Branch Officer shall forward the report to the concerned Revenue Branch Officer where the factory / establishment undertaking the job is located for proper cross verification.

D. Jobwork done outside the factory/establishment premises through factories/establishments which are not having independent Code Nos. but the supervision being exercised by the Principal Employer :

The employees engaged in jobs outsourced by the Principal Employer to outside factories/establishments which are not having independent Code Nos. but such outsourced job is being undertaken under the supervision of the Principal Employer or his agent are to be covered under Section 2 (9) (ii) of the Act. In this case also the compliance in respect of employees engaged in such work is to be made by the Principal Employer.

To ascertain supervision by the Principal Employer or his agent over the employees of such factories/ establishments under this category the Insurance Inspectors/ Verifying Officers of the ESI Corporation has to clearly bring out supervision exercised by the principal employers in their reports and Revenue Branch Officers passing 45-A orders will elaborate this aspect in their 45-A orders. Although the degree of control and supervision would be different in different types of industries, the following parameters for construing supervision should be kept in view by the I.Is/Verifying Officers and Revenue Branch Officers:-

- (a) In case where the employee is put to work under the eye and gaze of the Principal Employer, or his agent, where he can be watched secretly, accidentally or occasionally, while the work is in progress, so as to scrutinize the quality thereof and to detect faults therein, as also put to timely remedial measures by direction given, finally leading to the satisfactory completion and acceptance of work amounts to supervision, for the purposes of Section 2 (9) of the Act. This has been held by the Hon'ble Supreme Court in the case of CESE Ltd. Vs. S.C. Bose & Ors. (Civil Appeal Nos. 3197-98 of 1988 : SC)
- (b) The right of the Principal Employer to reject the finished product after the work is over would not alone constitute supervision. The 'supervision' has to be established while the work is in progress. This has been held by the Hon'ble Supreme Court in the case of CESE Ltd. Vs. S.C. Bose & Ors. (Civil Appeal Nos. 3197-98 of 1988 : SC)
- (c) The right to control the manner of work is not the exclusive test for determining the relationship of employer and employees. It is also to be considered as to who provides the equipment. The fact that the sewing machines on which the workers do the work, generally belong to the employer, is an important consideration for deciding that the relationship is that of Master and Servant. This has been held by Hon'ble Supreme Court in the case of M/s. Silver Jubilee Tailoring House and others Vs. Chief Inspector of Shops and Establishments (AIR 1974 : SC 37)

However, these parameters are illustrative in nature and Inspecting Officer has to examine the process of outsourcing in each case based on 'on the spot' verification as well as verification of records and he has to clearly bring out this in his Inspection Report.

E. Jobwork done outside the factory premises through units engaging less than 10/20 employees but working exclusively for the Principal Employer:

This category of employees are coverable under Section 2 (9) (i) of the Act as this amounts to 'notional extension of factory premises'. In this category the supervision is implied. The employer has to maintain a record under Section 41 (1 A) and Regulation 32 (1) (a). The Insurance Inspector should verify this aspect at the time of inspection and should clearly bring out in Inspection Report. Branch Officer shall also bring out these facts while passing 45-A order.

F. Jobwork done outside the factory/establishment premises through factory/establishment engaging less than 10/20 employees which are not independently coverable, and where no supervision is exercised and who are undertaking the work for more than one employer:

The employees of such Job Contractors are not coverable under the provisions of the Act. The Insurance Inspector shall clearly bring the details of such employees in their report, which will be subject to cross-verification.

G. Jobwork done outside the factory premises through Contractors/Immediate Employers who perform the work through Home workers or works in non-implemented areas :

The workers falling in this category are not coverable. The Insurance Inspectors shall provide the details in their reports.

For the purpose of verification and inspection, the details in respect of above categories of employers/employees should invariably be obtained from the Principal Employer in proforma prescribed in **Annexure-I** and shall be attached with the Inspection Reports. The Revenue Branch Officer shall scrutinize the information provided in Annexure – I attached with the report of Insurance Inspector.

The Insurance Inspectors shall also identify the coverable employees of the Job Contractors / Immediate Employers for providing the benefits on obtaining the Declaration Forms. These Declaration Forms shall be forwarded by Insurance Inspectors to concerned Branch Offices for issue of TIC, very next day. Where the employer fails to submit DFs, the prosecution action should be initiated simultaneously.

Broadly, the following categories of employees has to be brought under coverage by the Insurance Inspectors/ Verifying Officers –

- a) a) The employees working inside the premises of the Principal Employer but not covered so far.
- b) b) Coverable employees working outside the factory premises but working within the jurisdiction of the Area Inspector.
- c) c) In case of employees working outside the jurisdiction of the Area Inspector, the matter be reported immediately to concerned Revenue Branch Officer who, in turn, shall immediately inform to their counterpart under whose jurisdiction such employees are reported to be working for examining coverage of such employees. The latter will arrange immediate verification, coverage and claiming of contribution in respect of such employees.

Based on such inspection reports, the Regional Office also shall issue a detailed scrutiny letter along with a C-18 (ad-hoc) simultaneously and provide an opportunity to the employer to explain his stand along with the documents.

Regional Director / Joint Director (I/c) should instruct Revenue Branch Officers to ensure that where the non-covered employees are detected and brought under the coverage, this fact should be reflected in 45-A Orders.

The Regional Directors/ Jt. Directors I/c on receipt of a written representation from the employer may consider reopening of job outsourced cases of the following types depending upon the merit of the case judiciously by recording reasons for doing so:-

1. The cases where the dues of the Corporation have already been recovered should not be re-opened.
2. The cases where ex-parte orders under Section 45-A have been passed and C-19 have also been issued but actual recovery has not been effected, Regional Directors/Joint Directors (I/c) may consider re-opening of such cases judiciously after recording justifications.
3. The cases, which are in the pipeline for issue of 45-A orders may be regulated in accordance with these instructions.
4. Where there is an error apparent in issue of Speaking Orders under Section 45-A, Regional Directors may consider reopening of such cases.

The reopened cases must be decided within 3 months and be reported to Hqrs. Office in the quarterly returns prescribed for this purpose.

The previous instructions stands modified accordingly.

This issues with the approval of the Director General.

Receipt of the letter may be acknowledged.

Hindi version will follow.

Yours faithfully,

(K. MISHRA)
DIRECTOR (REV.)

Encl.:a/a.

ANNEXURE - 1

INFORMATION REGARDING THE JOBWORK DONE THROUGH CONTRACTORS/IMMEDIATE EMPLOYERS INSIDE AND OUTSIDE THE FACTORY PREMISES/ ESTABLISHMENTS.

Name of the Employer

Address

Code No.

Year for which information is being provided

A. A. Details of the Jobwork done inside the Factory/establishment premises through Contractors/ Immediate Employers having independent Code Nos.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution payable in respect of the employees engaged

B. B. Details of Jobwork done inside the factory premises through Contractors/Immediate Employers not having independent Code Nos.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution paid

C. C. Details of Jobwork done outside the factory/establishment premises through factories/establishments which are having independent Code No.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made

D. D. Details of Jobwork done outside the factory/establishment premises through factories/establishments which are not having independent Code No. but supervision being exercised by the Principal Employer.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution payable in respect of employees engaged

E. E. Details of Jobwork done outside the factory premises through units engaging less than 10/20 employees but working exclusively for the principal employer.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made

F. F. Details of Jobwork done outside the factory/establishment premises through factory/establishment which are not having independent Code Nos and where no supervision was exercised.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made

G. G. Details of Jobwork done outside the factory premises through Contractors/Immediate Employers who performed the work through home workers.

S. No.	Name and address of the Contractor/Immediate Employer and Code No.	Nature of Jobwork	Head of A/c under which payment booked	Payment made	Contribution paid/payable in respect of employees engaged

Certified that the above information is true and correct and agrees with the books of accounts, ledger, Balance Sheet / P & L A/c maintained by us.

Place :

Date :

Name and Address of the Principal Employer

(Employers are requested to keep ready the documentary addresses like Code No. allotment letters issued by Employees' State Insurance Corporation, copies of work orders, Bills, Returnable Gate Passes, Inward/Outward Challans, Income Tax, Pan Cards and other documentary evidence, in support of the correctness of the statement which can be verified by the Insurance Inspector)

2. Work entrusted to an individual outside the premises of the factory has a separate legal entity, having no nexus with the industry/unit which has no control or supervision over the functioning of their employees.

This category includes the factories/establishments, not independently coverable but on exclusive contract with the principal employer to perform work outside of the factory /establishment premises with no supervision being exercised by the principal employer

(e) (e) It is possible for an employee to work under different employers and still he can be an employee of the unit even if he works under different employers. It is also held that when the employer has the right to reject the end product, if it does not conform to the instructions of the employer and directs worker to redo it, the element of control and supervision is involved. [This has been held by the Hon'ble Supreme Court in the case of M/s. Silver Jubilee Tailoring House and others Vs. Chief Inspector of Shops and Establishments]

for delivery of benefits. Inspecting Officers should also insist on immediate coverage of employees so detected in course of inspection and obtain Declaration Forms in respect of such employees, on the spot, and forward it immediately to