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KARNATAKA EMPLOYERS' ASSOCIATION

NO.74, SHANKARA ARCADE, VANIVILAS ROAD, BASAVANAGUDI
BENGALURU - 560 004
Reg. No. TU 507 / 20-3-1962

Date : 04-11-2011

CIRCULAR No.57/2011

To
All Members of the Association

Sub: ESI Contribution on Conveyance Allowance

1. The Hon'ble High Court of Madras by its Order dated 30.6.2011 in Writ Appeal No.936/2011 in the case of Deputy Director, ESI Corporation Vs. Cosmopolitan Club has held that the Conveyance Allowance paid to the employees shall not form part of their wages for the purpose of ESI Act. This decision is based on the earlier decision of the Division Bench of the Hon'ble High Court of Madras in the case of the Regional Director, ESI Corporation Vs. Sundaram Clayton Limited, Moped Division, Madras (2004 I LLN 630) wherein the Division Bench had taken the same view as above.
2. We have been receiving queries from the members whether they can stop ESI Contribution on conveyance allowance paid to the employees in terms of the settlement or otherwise.
3. ESI Corporation has issued instructions that fixed conveyance allowance flowing out of wage settlement should be treated as wages for all purposes w.e.f. 1.4.2002. The Corporation has taken note of the earlier Judgment of Madras High Court wherein it had been held that the Conveyance Allowance paid by the employer for commuting between residence and place of work should not be taken as wages as the same is nothing but travelling allowance for the purpose of Section 2(22)(b) of the Act. The Hon'ble High Court of Karnataka in its judgment dated 16.3.2001 in MFA No.2867 of 1999 held that the Transport Allowances should be treated as wages as it flows out of a wage settlement thereby it has come within the first part of the definition of 'wages' under Section 2(22) of the Act. The Corporation has decided to accept the rationale behind the decision of the Karnataka High Court and accordingly has instructed its field functionaries that the fixed allowance flowing out of a wage settlement should be treated as wages for all purposes. However, the following payments should not be treated as wages under Section 2(22) of ESI Act and also for the purpose of deciding coverage of an employee under Section 2(9) of the Act:-

- (a) Amount towards conveyance paid or reimbursed to any employee for incurring expenses for specific duty related journey.
 - (b) Reimbursement of actual cost of conveyance for coming to work and going from work on production of ticket or season ticket to proof actual expenditure.
 - (c) Payment of certain amount for maintenance of vehicle depending upon cadre of the Official and category of the vehicle and subject to production of records for actually maintaining the vehicles.
 - (d) Fixed conveyance allowance paid at an interval exceeding two months, unless such payment is made as per contract of service or agreement.
4. Members are advised to follow the instruction of ESIC based on the decision of the Hon'ble High Court of Karnataka i.e., to include Fixed Conveyance Allowance as wages for the purpose of paying ESI contributions.

for KARNATAKA EMPLOYERS' ASSOCIATION

B.C. Prabhakar

**(B.C. PRABHAKAR)
PRESIDENT**