

GAHC010227012024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5568/2024

M/S EZZY BAZZAR AND ANR
SIX MILE NEAR IDBI BANK, GUWAHATI 781022, KAMRUP M ASSAM
REPRESENTED BY ITS PROPRIETOR.

2: SHRI PENNY BORDOLOI
PROPRIETOR OF M/S EZZY BAZAAR
S/O PURNA KANTA BORDOLOI
RESIDENT OF PARLAY RESIDENCY
A3A
BEHIND SANTIGRAM HOUSING COMPLEX
JAYANAGAR
TRIPURA ROAD GUWAHATI 781022
KAMRUP M ASSA

VERSUS

STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF ASSAM, DISPUR
GUWAHATI 06

2:EMPLOYEE STATE INSURANCE CORPORATION
NORTH EAST REGIONAL OFFICE
BAMUNIMAIDAM
GUWAHATI KAMRUP M ASSAM

3:THE REGIONAL DIRECTOR
EMPLOYEE STATE INSURANCE CORPORATION
REGIONAL OFFICE BAMUNIMAIDAM
GUWAHATI 781021 ASSAM

4:THE ASSISTANT DIRECTOR
EMPLOYEE STATE INSURANCE CORPORATION
REGIONAL OFFICE BAMUNIMAIDAM
GUWAHATI 781021 ASSAM

5:THE RECOVERY OFFICER
EMPLOYEE STATE INSURANCE CORPORATION
REGIONAL OFFICE
BAMUNIMAIDAM
GUWAHATI 781021 ASSAM

6:HDFC BANK LTD.
RUKMINIGAON BRANCH.A.P TOWER
3RD FLOOR
G.S ROAD
GUWAHATI 781022
KAMRUP M ASSAM . REP. BY ITS BRANCH MANAGER

Advocate for the Petitioner : MR. S CHAKRABORTY,

Advocate for the Respondent : GA, ASSAM, SC, ESIC

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 30.10.2024

Heard Mr. N. Deka, learned counsel for the petitioner and Mr. S. R. Baruah, learned counsel for the respondent No. 1. Also heard Mr. M. Smith, learned counsel for the respondent Nos. 2 to 5.

2. The petitioner's counsel submits that the impugned order dated 26.05.2023 passed by the Recovery Officer, ESI NE Region, requiring the petitioner to deposit Rs.12,80,133/-, calculated as on 26.05.2023 with interest, with the ESI Corporation, should be set aside.

3. The case of the petitioners is that the petitioner No. 2 is the sole proprietor of the petitioner No. 1 firm, running a small grocery shop, having 5 employees. The Employees State Insurance (ESI) Authorities made the ESI Act, 1948

applicable to the petitioner in the year 2014 and an ex-parte order dated 28.01.2022 was issued against the petitioner for payment of dues amounting to Rs. 7,94,063/-. Thereafter, the Recovery Officer, ESI NE Region issued a prohibitory order dated 26.05.2023, directing the petitioner to pay Rs. 12,80,133/- as on 26.05.2023 with interest @ Rs. 261.06 per day from 27.05.2023. Vide the said order, withdrawal from the cash credit account of the petitioner was prohibited and the petitioner's account was frozen.

4. The petitioners' counsel submits that in the meantime, the petitioner's cash credit account had been categorized as a NPA by the HDFC Bank and the bank issued a legal notice dated 27.09.2024, demanding an amount of Rs. 48,19,822.94 from the petitioner.

5. The grievance of the petitioner is that despite making an attempt to liquidate the cash credit account, the bank is not accepting any amount due to the prohibitory order issued by the Recovery Officer, stating that any amount deposited in the bank would go towards the ESI dues.

6. Mr. M. Smith, learned counsel for the respondent Nos. 2 to 5 submits that an alternative remedy is available to the petitioners by exercising the option under Section 45AA or Section 75 of the ECI Act, 1948. He submits that even though the petitioners' counsel has taken a stand that there is no incumbent to whom an appeal can be filed under Section 75 of the ECI Act, 1948, an order under Section 45A can be put to challenge before the Appellate Authority under Section 45AA. Accordingly, the petitioner should be directed to approach the Appellate Authority.

7. On hearing the learned counsels for the parties, it would be apposite to refer to Section 45AA, which is as follows:-

“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.”

8. The above provision clearly shows that there is an alternative remedy available to the petitioner, besides Section 75 of the ECI Act, 1948.

9. In the case of ***Harbanslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd. & Ors.***, reported in ***(2003) 2 SCC 107***, the Supreme Court has held that in spite of availability of alternative remedy, the High Court may still exercise its jurisdiction in at least 3 contingencies:-(i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged.

10. In view of the present case not coming within the 3 contingencies laid down by the Supreme Court in ***Harbanslal Sahnia (Supra)***, this Court is of the view that the writ proceedings should not proceed any further, as there is an alternative remedy available. Accordingly, the petitioner should approach the Appellate Authority under Section 45AA of the ECI Act, 1948, as that is an alternative statutory remedy. This would be in consonance with a similar order dated 14.06.2024 passed by this Court in WP(C) No. 3080/2024. However, as the appeal would be beyond the period of limitation provided under Section

45AA, the Appellate Authority should take a lenient view of any condonation delay application that the petitioner may file, keeping in view the fact that the Employees Insurance Court is not session, due to there being no Presiding Officer since March, 2024, as stated by the petitioner. In the event the petitioner files an application under Section 45AA against the order made under Section 45A, the Appellate Authority should consider disposing of the matter as expeditiously as possible.

11. The writ petition is disposed of accordingly.

JUDGE

Comparing Assistant