THE HON'BLE SRI JUSTICE A.RAJASHEKHER REDDY

WRIT PETITION No. 14258 of 2010

ORDER:

Heard learned counsel for the petitioner and Sri B.G.Ravinder Reddy, learned counsel for the respondents.

2. The case of the petitioner is that petitioner is running a small jewellery shop and owned by Public Limited Company incorporated in the year 1996 under the provisions of the Companies Act, 1956.

The first respondent treated the petitioner-Shop as covered under the ESI Act and also allotted a code No.52-17328-90 to facilitate compliance under the Act. Petitioner complied with the ESI Act and remitted the contributions within due time but however due to serious financial problems, due to lack of business on account of strict competition in the area, he closed down the firm and the business way back in the year 2002. It is further submitted that the second respondent along with his subordinates visited the work place of the petitioner and demanded an amount of Rs.4,78,451/- and informed him that the said amounts are due towards ESI contributions. Neither the second respondent nor his revenue inspectors and his subordinates did not serve any proceedings of notice or a prohibitory order or an attachment order. It is further submitted that the second respondent, his recovery officers, and his sub-ordinates have not issued any notice nor followed the procedure prescribed under the ESI Act. Questioning the said action of the respondents, the petitioner has filed the present writ petition.

3. Respondent No.1 filed a counter affidavit stating that petitioner is covered under the ESI with effect from 01.09.1998 and informed the coverage under the Act. As the petitioner failed to pay the contributions for the period from 02.09.1998 to 30.09.1999, a notice was issued in Form C-18 dated 06.03.2000 calling upon the employer to show cause as to why the contributions due should not be assessed at Rs.60,418/- and the petitioner was also given personal hearing on 18.04.2000. As the petitioner failed to avail the opportunity given,

an order dated 04.01.2001 was passed under Section 45-A of the ESI Act, determining the contributions due as Rs.60,418/-. Similarly, for the period from 10/1999 to 9/2000 C-18 dated 26.12.2000 was issued to the petitioner and after giving an opportunity to the petitioner 45-A order dated 08.03.2001 was passed determining the contributions due as Rs.55,770/-. For the period from 10/2000 to 03/2001, notice in Form C-18 was issued to the petitioner and after giving an opportunity to the petitioner, 45-A order dated 21.11.2001 was passed determining the contributions due as Rs.27,885/-. The petitioner was also prosecuted for non-payment of contribution in PSC Case No.128/2002 and the petitioner as well as its Managing Director were convicted by judgment dated 31.12.2004. However, petitioner paid the amount of Rs.27,885/- during the pendency of the criminal case. For the period from 04/2001 to 03/2002 notice in Form C-18 dated 29.10.2002 was issued to the petitioner and after giving an opportunity to the petitioner 45-A order dated 17.01.2003 was passed assessing the contributions due as Rs.55,770/-. It is further submitted that petitioner was given full opportunity for payment of contributions. He was served with all the notices and 45 orders were passed from time to time.

He was prosecuted for non-payment of contributions once and he was also convicted. Another criminal case is filed against him on the file of XV Metropolitan Magistrate's Court, Hyderabad for dishonouring the cheques issued by him towards the contributions payable under the ESI Act. Petitioner also filed E.S.I.Case No.42/2004 questioning the payment of contributions and all the papers were once again filed by the Corporation. The said case was dismissed for default. The action of the Corporation for recovery of the dues is fully justified and is in accordance with law. It is further submitted that the Recovery Certificates under Form C-19 were issued by the authorised recovery officer after following due process of law for recovery of the dues.

4. No reply affidavit is filed rebutting the same.

5. Though it is alleged in the writ petition that without issuing notice the respondents are forcing the petitioner to pay the amount of Rs.4,78,451/-, the counter affidavit goes to show that several show cause notices were issued and orders were passed under Section 45-A of the Act. Questioning the same, petitioner has also filed appeal and the same was dismissed for default. This aspect is not disputed by the petitioner. Though the petitioner is aware of these things, he suppressed the same in this writ petition. Only on the ground of suppression of facts, writ petition is liable to be dismissed. Even otherwise, it is evident from the counter affidavit averments that the due procedure prescribed under the Act was followed and the petitioner was put on notice and orders were passed determining the amounts. Petitioner has filed the appeal and the same was dismissed for default determining the payment of contributions and the petitioner failed to pay the said amounts. Hence I do not see any merit in the writ petition.

Writ Petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE A.RAJASHEKHER REDDY

March 14, 2016
LMV