

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3 of 2015

and

M.P.No.1 of 2015

M/s.Servals Automation Pvt.Ltd.,
Rep.by its Director - Sudhakar,
5/1, Balaji Nagar I Street,
Ekkatuthangal,
Chennai - 600 032.

...Petitioner

vs

The Deputy Director,
Regional Office(Tamil Nadu)
Employees State Insurance Corporation,
143, Sterling Road,
Chennai - 600 034.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in respect of its Proceeding No.TN/INS VIII/51-00-101650-000-0699C-18 Adhoc and quash its show cause notice dated 25.7.2014.

For Petitioner : Mr.S.Ravindran, Senior Counsel
For M/s.S.Bazeer Ahamed

For Respondent : Mr.K.Prabhakar, Standing Counsel
for ESI

ORDER

The show cause notice dated 25.07.2014 issued by the respondent is under challenge in this writ petition.

2.The learned Senior Counsel appearing on behalf of the writ petitioner raised a ground by stating that in respect of the very same Assessment Years 2009-2010, 2010-2011, 2011-2012, twice the show cause notice had been issued. The learned Senior Counsel emphatically contended that the writ petitioner had already deposited the entire contribution amount as demanded by

the Department. While so, for the very same Assessment Years, once again the impugned show cause notice has been issued to the writ petitioner. Thus, the writ petitioner is constrained to move the present writ petition.

3.The learned Senior Counsel said that once the amount is paid by the writ petitioner, the respondent has no jurisdiction to issue the show cause notice once again in respect of the very same amount, which was already paid.

4.This Court is unable to verify the said contentions made on behalf of the writ petitioner for the simple reason that the respondent has not filed any counter affidavit for the past three and half (3 ½) years. Any such factual details and disputes, unless the counter affidavit is filed by the respondent, the Courts' will not be in a position to appreciate the facts and decide the matter. When the writ petitioner raised a ground that the impugned show cause notice has been issued in respect of the very same Assessment Years, for which, the contributions were already deposited, then the same is to be ascertained and appropriate counter affidavit ought to have filed by the respondent.

5.The learned counsel appearing on behalf of the respondent has no convincing reason for not filing counter affidavit by the respondent for the past three and half (3 ½) years. Thus, the omission of the respondent in this regard is to be deprecated.

6.On receipt of Rule Nisi Notice from the High Court, the authorities competent are bound to file the counter affidavit within a reasonable period of time. In the absence of filing any such counter affidavit within a reasonable period of time, a factual inference also can be drawn by the Courts' that the officials competent are colluding with the litigants in this regard. However, this Court is not concluding such a decision in view of the fact that the same is to be investigated and ascertained by the competent higher authorities. The official, who was dealing with the writ petition, must be enquired into in respect of the fact regarding not filing of the counter affidavit in the present writ petition for the past three and half (3 ½) years. The Regional Director, Employees State Insurance Corporation, Chennai is directed to conducted an enquiry in all such cases, where the counter affidavits are not filed for years together and initiate appropriate disciplinary action against the officials, who have committed an act of negligence, dereliction of duty under the relevant Discipline and Appeal Rules.

7.As far as the present writ petition is concerned, the learned Senior Counsel raised a ground that the impugned show cause notice has been issued in respect of the very same

Assessment Years, for which, the contributions were already deposited by the writ petitioner. If the facts placed by the writ petitioner is correct, then the respondent is bound to verify the original records and take a decision and drop all further proceedings, if it relates to the same year and not permissible under the provisions of the Act. If it is not in connection with the same year or if the show cause notice and the contentions raised in the show cause notice are relating to some other transactions, then the respondent is at liberty to proceed against the writ petitioner based on the impugned show cause notice. In such an event, the writ petitioner has to file his explanations / objections in respect of the allegations set out in the show cause notice and defend his case in the manner known to law.

8. In view of these factual discrepancies raised by the learned Senior counsel for the writ petitioner, the respondent is directed to consider the explanations already submitted by the writ petitioner and take a decision and pass orders within a period of four weeks by assigning reasons and communicate the same to the writ petitioner without any further delay. It is needless to state that the authorities competent have to verify the original records in respect of the allegations set out in the show cause notice and take a decision appropriately. The respondent is directed to inform the hearing date to the writ petitioner within a period of two weeks from the date of receipt of a copy of this order and the decision shall be taken on merits and in accordance with law.

9. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.
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Sd/-

Assistant Registrar(CCC)

//True Copy//

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Sub Assistant Registrar

To

The Deputy Director,
Regional Office(Tamil Nadu)
Employees State Insurance Corporation,
143, Sterling Road,
Chennai - 600 034.

WEB COPY

2. The Regional Director,
Employees State Insurance Corporation,
143, Sterling Road, Chennai - 600 034.

+1cc to M/s.S.Bazeer Ahamed, Advocate S.R.No.73245

KR/14/11/18

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