

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.3976 of 2018
and WMP.Nos.4887 and 4888 of 2018

M.Arivumani

... Petitioner

Vs.

Recovery Officer,
Office of the Recovery Officer,
'Employees' State Insurance Corporation,
'Panchdeep Bhavan', 143, Sterling Road,
Nungambakkam, Chennai-600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent vide its letter No.TM/RECY/EC-15-51001125320000999, CCR No.72201 dated 21.11.2017 and quash the same and consequently, direct the respondent to refund the recovered sum of Rs.15,000/- (Rupees Fifteen Thousand Only) to the petitioner herein.

For Petitioner : Mr.A.Murali

For Respondent : Mr.G.Bharadwaj
for ESI

O R D E R

This Writ Petition is directed against the impugned proceedings/summon dated 21.11.2017, passed by the Recovery Officer of the Employees' State Insurance Corporation [ESI], in and by which the petitioner was called upon to appear in person under Rule 83 of the Second Schedule to the Income Tax Act, 1961 and produce all the documents mentioned below:

1. Documents pertaining to the constitution and setting up of the factory / establishment.
2. The Profit and Loss Account, the Balance Sheets and the Income Tax Assessment Order for the assesment year.
3. Cash Book, Ledger and Vouchers pertaining to the current Financial Year.

4. The details of the immovable property owned by the factory/establishment.

5. Payment proposal - Cheque / DD for the said amount.

The details of Current A/c or any other account statement maintained

by the employer along with xerox copy of computerised sheet.

2. The learned counsel appearing for the petitioner has submitted that the petitioner company is doing contractual maintenance work at Indian Oil Corporation Limited [IOCL], Tondiorpet Terminal and as per the instructions of IOCL, the petitioner company has to pay the Employees State Insurance contribution to the said employees in the account of M/s.Indian Oil Corporation Limited. Accordingly, the petitioner company paid the entire ESI contributions to the above said employees for the entire contractual period without any default. The statement of accounts for the period between April 2015 and March 2017 for the employees have been scheduled under this contractual agreement. However, the respondent/Recovery Officer, without verifying the payment details, has issued the impugned summon under Section 45G of the ESI Act and ordered to recover a sum of Rs.1,25,764/-. The learned counsel appearing for the petitioner has further submitted that when the petitioner has paid the entire ESI contributions as per the instructions of IOCL, no liability can be fixed on the petitioner, as it would amount to double liability.

3. Mr.G.Bharadwaj, learned counsel appearing for the respondent/ESI has submitted that summon alone has been issued to the petitioner company to appear in person and produce the aforesaid documents.

4. If the employees contributions has been paid by the petitioner company, it should have been done in the manner known to law by paying it to the ESI corporation. On the other hand, the petitioner company had paid to IOCL, which cannot be construed as proper payment. Since the petitioner pleaded that only as per the instructions of IOCL, they had paid the entire contributions of the employees in the account of IOCL, this Court directs the petitioner to appear in person before the respondent on 09.03.2018 at 2.15 pm. and produce the proof of payment claimed to have been made towards employees contribution to the Indian Oil Corporation and on such production, the respondents are directed to receive the same and till then, the respondent shall not precipitate the issue.

5. This Writ Petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

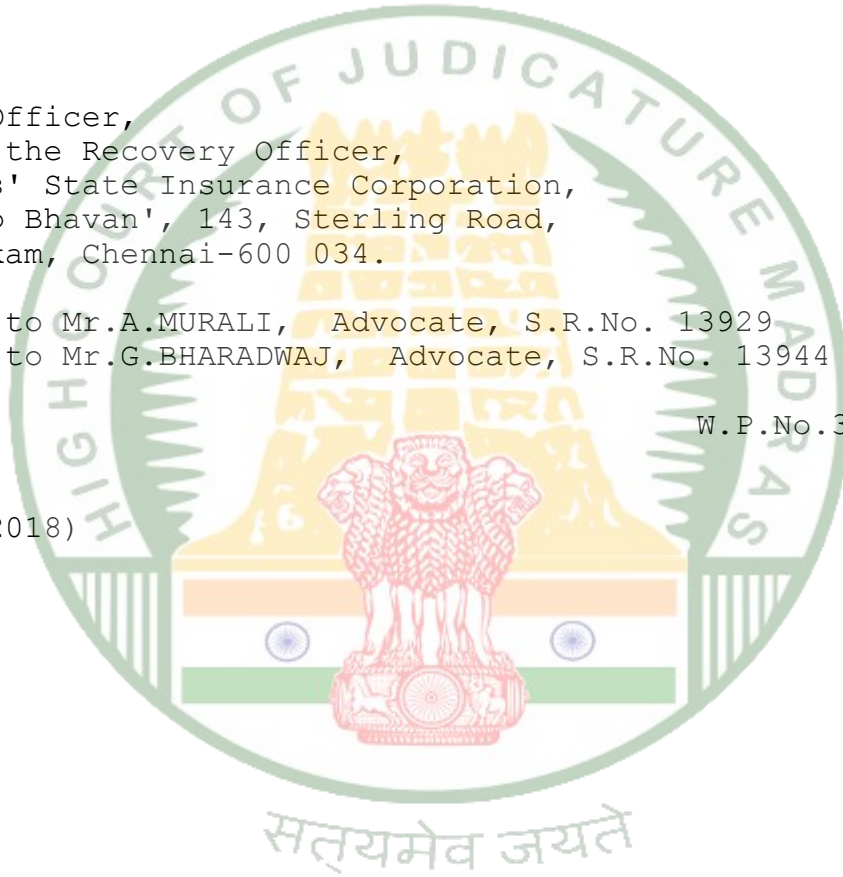
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To
Recovery Officer,
Office of the Recovery Officer,
'Employees' State Insurance Corporation,
'Panchdeep Bhavan', 143, Sterling Road,
Nungambakkam, Chennai-600 034.

+1cc to Mr.A.MURALI, Advocate, S.R.No. 13929
+1cc to Mr.G.BHARADWAJ, Advocate, S.R.No. 13944

W.P.No.3976 of 2018

GJ II (CO)
TR(26/02/2018)



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