

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.5202 of 2018
and
W.M.P.No.6365 of 2018

Kanniyakumari Medical Mission CSI,
Neyyoor & Post, Kanniyakumari District,
rep. by its Medical Superintendent,
Dr.S.R.Rajesh Sathya

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by its Principal Secretary,
Labour and Employment Department,
Fort St. George,
Chennai-600 009.

2. The Joint Director Employees State Insurance Corporation,
Sub Regional Office Tirunelveli,
Panchadeep Bhavan, ESIC Complex,
Salai Street, Vannarapettai,
Tirunelveli- 627 003

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of Declaration to declare that the exemption granted to the petitioner's hospital under Sec.87 r/w Sec.91-A of ESI Act 1948 in G.O.(D) No.175, Labour and Employment (L-1) Department dated 07.05.2015 will hold good from 03.04.2014 and consequential demand notice issued by the second respondent in his notice bearing No.66000407800001401/08292017008/195/17 and 76/17 dated 18.09.2017 and 06.11.2017 as invalid.

For Petitioner .. Mr.P.Ebenezer Paul

For Respondents .. Mr.J.Ramesh, AGP for R1
... Mr.K.Prabakar, for R2

ORDER

This Writ petition has been filed seeking for issuance of a Declaration to declare that the exemption granted to the petitioner's hospital under Sec.87 r/w Sec.91-A of ESI Act 1948 in G.O.(D) No.175, Labour and Employment (L-1) Department dated

07.05.2015 will hold good from 03.04.2014 and consequential demand notice issued by the second respondent in his notice bearing No.66000407800001401/08292017008/195/17 and 76/17 dated 18.09.2017 and 06.11.2017 as invalid.

2. According to the learned counsel for the petitioner, the petitioner Management had applied for exemption under the provisions of the Employees State Insurance Act on 22.09.2014 and in consideration of the same, the respondents have granted exemption under Section 87 r/w 91A of the Employees State Insurance Act 1948 Act in G.O.(D) No.175, Labour and Employment (L-1) Department dated 07.05.2015 for the period from 08.05.2015 to 07.05.2016. The grievance of the petitioner is that the first respondent ought to have granted exemption from the date of application i.e., 22.09.2014, and not from the future date.

3. In response to notice sent to the respondents, a detailed counter affidavit has been filed on behalf of the second respondent. The learned counsel for the second respondent would submit that the application was made by the petitioner on 22.09.2014 and the same was received by the first respondent on 29.09.2014. Subsequently, by a letter dated 09.10.2014, the first respondent has sought for certain documents for consideration for grant of exemption. The petitioner sent a reply dated 05.11.2014 to the first respondent enclosing the documents as sought for. Thereafter, the Government passed a G.O. vide in G.O.(D) No.175, Labour and Employment (L-1) Department dated 07.05.2015 granting exemption only from 08.05.2015 to 07.05.2016. Therefore, the petitioner cannot claim exemption retrospectively from the date of his application.

4. In any event, the learned counsel for the respondents would submit that though the present claim made by the petitioner Management seeking exemption which is under challenge, is for the period from 01.04.2013 to 07.05.2015 and the petitioner Management cannot escape from the liability of contribution in view of non granting of exemption for the period covered under the impugned order.

5. The learned counsel for the second respondent would submit that let the petitioner shall pay the present demand for the period from 01.04.2013 to 07.05.2015 and make a representation to the first respondent for consideration of his claim for grant of exemption from the date of their application dated 22.09.2014, the same would be considered by the respondents.

6. Considering the submissions made by the learned counsel on either side, this Court is of the view that the petitioner

Management not being granted exemption from the earlier period i.e., from the date of application, cannot avoid the demand fastened on them by the impugned demand towards ESI contribution. However, as reasonably submitted by the learned counsel for the second respondent, the petitioner can make a representation to the first respondent seeking for exemption from the date of his application i.e., 22.09.2014 since it appears that ultimately the exemption was granted by the first respondent only on the basis of their application dated 22.09.2014 and such application if entertained to be considered, the exemption would be granted from the date of his application. In view of the above, this Court thinks it fit in view of the fact that the petitioner Management has to pay the demand made by the respondents towards ESI contribution for the period from 01.04.2013 to 07.04.2015 and the first respondent however, is directed to consider the request of the petitioner for grant of exemption from the date of his application i.e., 22.09.2014, by taking into consideration the documents submitted by the petitioner seeking for exemption and shall pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. In case, the petitioner's request is favorably considered from the date of his application for exemption, the amount paid for the period covered under exemption shall be adjusted in the future demand by the respondents.

7. The writ petition is disposed of, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George,
Chennai-600 009.
2. The Joint Director Employees State Insurance Corporation,
Sub Regional Office Tirunelveli,
Panchadeep Bhavan, ESIC Complex,
Salai Street, Vannarapettai,
Tirunelveli- 627 003

+1cc to Mr.K.Prabakar, Advocate, S.R.No.30753
+1cc to the Government Pleader, S.R.No.31632
+1cc to P.Ebenezer Paul, Advocate, S.R.No.30413

W.P.No.5202 of 2018

SSI (CO)

RRS (17/06/2019)



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