

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.13643 of 2019

Balu Company
Rep by its Partner S.Balasubramanian,
Customs Shipping and Cleaning Agents,
Sivagami Complex, 318, (Old No.174) 1st Floor,
Thambu Chetty Street, Chennai - 600 001.

...Petitioner

Vs.

The Deputy Director,
Employees State Insurance Corporation,
Regional Office, Chennai - 600 034.

....Respondent

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondent to refund the sum of Rs.3,52,467/- along with 6% interest per annum based on the representation dated 01.10.2018 for the accounting years 2004-05 and 2005-06.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Prabakar

ORDER

The petitioner is carrying on a business of Custom House Agency. As a Custom House Agent, the petitioner used to coordinate with the Customs Department on clearing imported goods on behalf of the customers. During 2007, an inspection was carried out in the petitioner's establishment on behalf of the ESI Corporation for accounting years 2004-05 and 2005-06 and contribution was sought to be claimed on certain omitted wages, viz., salary difference, consultancy charges, incentive payments, office maintenances, conveyance expenses, staff welfare to the extent of Rs.32,316/-. A notice was also issued on 12.09.2007 and an enquiry was held under Section 45-A of the Act. At that time, the respondent Corporation claimed contribution on agency Commission to an extent of Rs.3,52,467/-.

2. According to the petitioner, the claims, apart from agency commission by the Corporation, have already been paid and the agency commission was nothing but income to the petitioner and no contribution is liable to be paid on such commission. According to the petitioner, it has pleaded that the agency commission (Income of the Firm) is not wages under Section 2(22) of the ESI Act. However, without understanding the objections raised on behalf of the petitioner, the respondent Corporation by order dated 26.05.2008 has determined the compensation to the extent of Rs.4,42,549/-. Thereafter, a show cause notice was issued on 16.12.2011 for recovery of contribution in terms of its earlier order dated 26.05.2008.

3. The petitioner was therefore constrained to challenge the recovery order along with the original determination order dated 26.05.2008 before the Principal Labour Court, Chennai in E.I.O.P.No.5 of 2014. After advertent to the rival submissions and after perusing the materials, the Labour Court allowed the E.I.O.P. in favour of the petitioner herein and proceedings of the ESI Corporation was set aside by order dated 24.06.2018. The respondent herein was directed to refund the contribution on agency commission of Rs.3,52,467/- along with 6% interest per annum to the petitioner. Thereafter, it appears that the ESI Corporation has preferred CMA before this Court with a condonation delay application.

4. When the matter is taken up today for hearing, the learned counsel appearing for the ESI Corporation would submit that this Court has dismissed the condone delay application filed by the ESI Corporation.

5. In view of the dismissal of the condone delay application filed on behalf of the Corporation, the ESI Corporation is now under an obligation to comply with the order passed by the Principal Labour Court dated 24.06.2018.

6. The learned counsel appearing for the ESI Corporation would submit that the Corporation may be given reasonable time to refund the amount along with interest and that they are willing to abide by the order passed by the Labour Court in the aforementioned E.I.O.P.No.5 of 2014.

7. In consideration of the submission as above, the writ petition is disposed of with the following directions;

The respondent Corporation is directed to refund the amount as directed by the Principal Labour Court, Chennai in E.I.O.P.No.5 of 2014 vide its order dated 24.06.2018 to the tune of Rs.3,52,467/- along with interest at 6% per annum within a period of six weeks from the date of receipt of copy of this order.

No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msk/mrm

To

- 1) The Deputy Director,
Employees State Insurance Corporation,
Regional Office, Chennai - 600 034.
- 2) The Principal Labour Court,
Chennai.

+1 cc to Mr.S.Ravee Kumar, Advocate, S.R.No.62153

+1 cc to Mr.K.Prabakar, Advocate, S.R.No.61731

W.P.No.13643 of 2019

PM(CO)
SSM(27/08/2019)

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