

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

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

W.P.No.12543 of 2014

and

M.P.No.1 of 2014

The Meenakshi Vilasa Company(P) Ltd.,
Rep.by its Managing Director,
113, Kottamangalam, Udumalpet Taluk,
Tiruppur District - 642 201

..Petitioner

Vs.

1.The Assistant Regional Director,
Sub-Regional office,
ESI Corporation, 1897, Trichy Road,
Ramanathapuram, Coimbatore - 641 045

2.The Recovery officer,
Sub-Regional Officer,
ESI Corporation, 1897, Trichy Road,
Ramanathapuram, Coimbatore - 641 045

..Respondents

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 2nd respondent proceedings in
No.56/RRC/CP/56/60129/11 dated 21-03-2014 and quash the same.

For Petitioner : Mr.S.Thirumavalavan

For Respondents : Mr.TNC Kaushik
Standing counsel for ESI

ORDER

The order dated 21.03.2014 passed by the 2nd respondent
under Rule 83 of the Second Schedule to the Income Tax Act,
1961, summoning the writ petitioner to appear in person is under
challenge in the present writ petition.

2. The petitioner states that they are running a Spinning
Mill and remitting the contribution to the Provident Fund and
Employees State Insurance authorities regularly without any

default. The authorities sought to recover ESI Contribution on the stipend paid to the apprentices. The petitioner filed ESIOP before the ESI Court and obtained an interim order. However, the respondents pursued to recover the contributions despite the fact that the ESI Court granted interim order. Thus, the writ petitioner is constrained to move the present writ petition on the ground that inspite of the interim order granted by the ESI Court, the respondent authorities are initiating actions to recover the contributions.

3. As per the interim order of this Court dated 23.10.2019, Mr.A.Swaminathan, Recovery officer, ESI Corporation, Coimbatore - 45, is present before this Court today along with the files. Perusal of the files reveals that the final order under Section 45A of the ESI Act was passed by the competent authority on 21.12.1992. Against the said order, the writ petitioner filed a petition before the competent ESI Court under Section 75 of the ESI Act. The said petition filed before the ESI Court was dismissed on 03.11.2003. The writ petition was filed by the writ petitioner on 25th April 2014. However, the fact regarding the dismissal of the petition by the ESI Court was not stated in the affidavit filed in support of the writ petition. The writ petitioner approached this Court on the ground that the authorities have initiated action despite the fact that the ESI Court granted an interim order. Thus, the facts placed before this Court in this writ petition are incorrect and the ESI petition filed by the petitioner was dismissed during the year 2003 itself. Even, without verifying those facts and circumstances, the writ petition is filed on the ground that the interim order was in force and inspire of the interim order, the ESI authorities have initiated action. Such an approach of the writ petitioner cannot be appreciated. While filing the writ petition, the petitioner is duty bound to verify all the facts and circumstances, enabling this Court to entertain a writ petition on certain genuine grounds. Contrarily, they have proceeded based on the interim order granted by the ESI Court, by not stating that the said ESI case was dismissed by the competent Court in the year 2003 itself.

4. The ESI authorities / respondents are also bound to be vigilant in respect of the recovery of contributions by following the procedures as contemplated under the ESI Act and Rules. Any lapse or dereliction is also to be viewed seriously. The contributions are to be recovered by following the procedures as expeditiously as possible and there should not be any delay on the part of the authorities also. The very object of the Act is a welfare legislation, enacted for the benefit of the working class. Thus, the authorities must be vigilant and ensure that the contributions are recovered as per the provisions of the ESI Act and Rules. In the event of any lapse

or delay or negligence, all suitable actions are to be initiated against such officials also.

5. In the present writ petition, the order under Section 45A was passed in the year 1999 and challenging the said order, the writ petitioner filed a petition under Section 75 of the ESI Act before the ESI Court. The said petition was dismissed in the year 2003 and thereafter, the progress made in this regard are not made available in the writ petition.

6. Under these circumstances, the writ petitioner is not entitled for any relief as such sought for in the present writ petition. However, the writ petitioner is at liberty to respond to the summon, issued by the respondent by submitting their explanations or objections and in the event of receiving any such explanations / objections from the writ petitioner, the respondents are bound to proceed further, by following the procedures as contemplated under the ESI Act and Rules.

7. This being the facts and circumstances, the writ petitioner has not established any acceptable ground for the purpose of granting the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Regional Director,
Sub-Regional office, सतयमेव जयते
ESI Corporation, 1897, Trichy Road,
Ramanathapuram, Coimbatore - 641 045

2. The Recovery officer,
Sub-Regional Officer,
ESI Corporation, 1897, Trichy Road,
Ramanathapuram, Coimbatore - 641 045

+1 CC to Mr.TNC. Kaushik, Advocate sr 90357.

W.P.No.12543 of 2014

AD(CO)

SP(02/12/2019)