

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.18824 of 2014

And

M.P.No.1 of 2014

The Management
Kancheepuram District Consumer
Cooperative Wholesale Stores,
Represented by its Managing Director,
No.185, Prakasam Salai,
Chennai-600 108. ... Petitioner

vs.

- 1.The Regional Director,
Employees State Insurance Corporation,
143, Sterling Road,
Nungambakkam,
Chennai-600 034.
- 2.The Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road,
Nungambakkam, Chennai-600 034.
- 3.The Branch Manager,
State Bank of India,
Chennai Main Branch (MMB),
Chennai-600 001.
- 4.The Branch Manager,
Chennai Central Cooperative Bank Ltd No.215,
Prakasam Salai,
Chennai-600 108. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the notice dated 02.07.2014 bearing No.TN/RECY/45G/51-18435/CCR-29473 on the file of the second respondent and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram
For Respondents-1&2 : Mr.G.Bharadwaj
For Respondent-3 : No Appearance
For Respondent-4 : Mr.P.Anbarasan

O R D E R

The notice dated 02.07.2014 issued by the second respondent under Section 45-G of the Employees' State Insurance Act, 1948, is under challenge in the present writ petition.

2. The writ petitioner is Kancheepuram District Consumer Cooperative Wholesale Stores.

3. The contention of the writ petitioner is that the writ petitioner Cooperative Society is not liable to pay the ESI contribution and they have already submitted an explanation to the authorities concerned and further submitting an application before the Government for grant of exemption.

4. This Court is of the considered opinion that mere submitting an application to the Government seeking exemption, cannot be a ground to quash the notice issued by the competent authority under Section 45-G of the Employees' State Insurance Act, 1948. Even in case where the petitioner claims any exemption, they are bound to submit documents and explanations to the authorities, enabling them to consider and thereafter, if they are aggrieved, they can prefer an appeal under the provisions of the Act. Thus, without exhausting the remedies available under the Act, no writ petition can be entertained. This apart, the notice issued under Section 45-G of the Employees' State Insurance Act, is to be responded by the writ petitioner by way of submitting explanations/objections along with the documents, if any.

5. This being the factum of the case, the writ petitioner is at liberty to approach the competent authorities by way of explanations/objections along with the documents. In the event of passing any further orders, then also the writ petitioner is at liberty to file an appeal under the provisions of the Act.

6. However, the facts and the circumstances narrated on merits, cannot be adjudicated in the present writ petition, which is to be adjudicated with reference to the documents as well as the evidences, if any. Under these circumstances, the

writ petitioner has not made out any acceptable ground for the purpose of considering the present writ petition. In the event of preferring any appeal by the writ petitioner, the competent appellate authority is directed to consider the application to condone the delay, enabling the writ petitioner to adjudicate the issues on merits.

7. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Connected M.P is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

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

2.The Recovery Officer,
Employees State Insurance Corporation,
143, Sterling Road,
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Chennai Main Branch (MMB),
Chennai-600 001.

4.The Branch Manager,
Chennai Central Cooperative Bank Ltd No.215,
Prakasam Salai, Chennai-600 108.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 87183
+1cc to Mr.P.Anbarasan, Advocate, S.R.No. 87256
+1cc to Mr.G.Bharadwaj, Advocate, S.R.No. 87423

W.P.No.18824 of 2014

SKV(CO)
GN(27/12/2019)