

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WP.No.18776 of 2004

Pandiyam Exports,  
Rep. by its Managing Partner  
M.A.Murugan,  
9, Baker Street,  
Chennai - 600001.

...Petitioner

Vs

1. The Deputy Director,  
Employees State Insurance Corporation,  
143, Sterling Road,  
Chennai - 600034.

2. The Recovery Officer,  
ESI Corporation,  
143, Sterling Road,  
Chennai - 600034.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari calling for the records of the 1st respondent culminating in his order bearing reference No.TN/INS.VIII/51 - 58158 - 82/4301 dated 17.06.2003 and quash the same.

For Petitioner : Ms.Nivedita.S.Menon

For Respondents: Ms.S.Jayakumari

ORDER

It is the submission of the learned counsel for the petitioner that the petitioner Company had merged with M/s. Premier Paper and Boards Private Limited with effect from 05.12.1995 and the services of the 44 employees of the petitioner Company have already been transferred to M/s. Premier Paper and Boards Private Limited. As such, the learned counsel submitted that since the subsequent transferee Company namely M/s. Premier Paper and Boards Private Limited have been making

their contributions for the same set of 44 employees under their respective insurance numbers, the demand made in the present impugned order dated 17.06.2003, cannot be sustained.

2. It is no doubt true that the petitioner herein had not replied to the Show Cause Notices sent by the respondent Corporation prior to the impugned order. As such, the Corporation cannot be found fault with for having sent the impugned notice. Nevertheless, since it is claimed by the petitioner herein that the concerned employer has been making contributions for their employees during the relevant period between 01.12.1995 and 31.12.1996, the present contribution demanded in the impugned notice, may not be proper.

3. Further, the learned Standing Counsel for the respondents Corporation disputes such a statement made by the petitioner herein. The learned Standing Counsel also submitted that though the petitioner was given sufficient opportunity to establish their case, they had not utilised the same.

4. In the light of the above observations, it is the view of this Court that the matter may be remanded back to the respondent Corporation for a fresh consideration, after giving due opportunity to the petitioner herein.

5. It is the now brought to the notice of this Court that when this writ petition came to be earlier dismissed for default, the respondent Corporation had initiated recovery proceedings and had also recovered a part of dues claimed by them. Subsequently, the writ petition came to be restored. As such, incase the petitioner herein establishes that there is no liability on their part to make contributions for the relevant period, they would be entitled to seek for refund of the amount recovered/adjustments in future contributions.

6. It is made clear that this Court had not expressed any of its views with regard to the petitioner's contributions for the relevant period between 01.12.1995 to 31.12.1996 and that the 1st respondent herein would be at liberty to determine the liability on the merits of the claim made by the petitioner herein.

7. In the light of the aforesaid discussions, the impugned order dated 17.03.2003, is set aside. Consequently, the proceedings are remanded back to the 1st respondent herein for a fresh consideration. The petitioner is also granted liberty to make an appropriate representation enclosing the relevant documents and on receipt of such a representation, the 1st respondent herein shall consider the same, on its own merits and pass appropriate orders, as expeditiously as possible.

8. Accordingly, the writ petition stands disposed of. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Deputy Director,  
Employees State Insurance Corporation,  
143, Sterling Road,  
Chennai - 600034.
2. The Recovery Officer,  
ESI Corporation,  
143, Sterling Road,  
Chennai - 600034.

+1cc to Ms.S.Jayakumari, Advocate, S.R.No.29589

+1cc to Mr.T.Mohan, Advocate, S.R.No.30382

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SR(CO)  
CS/13/05/2019



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