

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2177 of 2020
and
W.M.P. No. 2548 of 2020

M/s. Tide Water Oil Company (India) Ltd.,
Rep. By Mr. R. Venugopal,
General Manager - Souther Region,
Seshachalam Centre, 10th Floor,
No. 636/1, Anna Salai,
Chennai - 600 035.

...Petitioner

-vs-

1. The Regional Director,
Employees State Insurance Corporation,
Regional Office - Chennai, Panchdeep Bhavan,
No. 143, Sterling Road,
Nungambakkam,
Chennai - 600 034.
2. The Assistant/Deputy Director,
Employees State Insurance Corporation,
Regional Office - Chennai, Panchdeep Bhavan,
No. 143, Sterling Road,
Nungambakkam,
Chennai - 600 034.
3. The Recovery Officer,
Employees State Insurance Corporation,
Regional Office - Chennai, Panchdeep Bhavan,
No. 143, Sterling Road,
Nungambakkam,
Chennai - 600 034.
4. The Branch Manager,
HDFC Bank,
Anna Salai Branch,
No. 759, ITC Centre,
Anna Salai,
Chennai - 600 002.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned demand notice dated 05.12.2019 vide 51000086670000402/ CP/350036/CCR-9032 pending on the file of the Third Respondent and quash the same as illegal, without jurisdiction and beyond the scope of the E.S.I. Act.

For Petitioner : Mr. P.C. Harikumar
for M/s. P.C. Harikumar and Associates
For Respondents : Mr. S.P. Srinivasan,
Standing Counsel (for R1 to R3)

O R D E R
(through video conference)

Heard Mr. P.C. Harikumar, Learned Counsel for the Petitioner, Mr. S.P. Srinivasan, Learned Standing Counsel for the First to Third Respondents, and perused the materials placed on record apart from the pleadings of the parties.

2. It was pointed out by the Learned Standing Counsel appearing for the First to Third Respondents that the Order No. 51000086670000402/ CP/350036/CCR-9032 dated 05.12.2019, which is impugned in this Writ Petition, is a consequential order in furtherance to the Order No. TN/Ins-II/51-00-008667-000-0402/E.I.O.P. No. 174/2005 dated 16.02.2017 passed by the Second Respondent assessing the amount of contribution payable by the Petitioner under Section 45-A of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act' for short) and in the absence of any challenge to that parental order, the Petitioner cannot prosecute this Writ Petition for the relief claimed. In response thereto, Learned Counsel for the Petitioner contended that the aforesaid parental order had not been served to the Petitioner at any point of time earlier. Thereafter, on verification of records, Learned Counsel appearing for the First to Third Respondents had handed over a copy of the aforesaid Order No. TN/Ins-II/51-00-008667-000-0402/E.I.O.P. No. 174/2005 dated 16.02.2017 to the Learned Counsel for the Petitioner under written acknowledgment on 24.07.2020. In view of the dictum laid down by the Hon'ble Supreme Court of India in Collector of Central Excise, Madras -vs- M/s. M.M. Rubber and Co., Tamil Nadu [(1992) Supp (1) SCC 471], it was made clear in the order dated 24.07.2020 passed by this Court that the said Order No. TN/Ins-II / 51-00-008667-000-0402 / E.I.O.P. No. 174/2005 dated 16.02.2017 shall be treated as delivered to the Petitioner on 24.07.2020 for the purpose of reckoning limitation to challenge that order in appropriate legal proceedings.

3. It is represented by the Learned Counsel for the Petitioner

that without prejudice to the contentions of the Petitioner, a sum of Rs.1,12,875/- has been remitted by the Petitioner to the First to Third Respondents by Pay Order No. 407762 dated 28.07.2020 towards the dues claimed, the receipt of which has been acknowledged on 29.07.2020. In furtherance thereto, the Third Respondent by an Order No. TN/RECY/EC-9/51000086670000402 dated 10.08.2020 has revoked the earlier Order No. 51000086670000402/ CP/350036/CCR-9032 dated 05.12.2019, which has been impugned in this Writ Petition, reserving the right to proceed against the Petitioner to recover remaining amount due as per the provisions of the Act.

4. In view of the subsequent developments, Learned Counsel for the Petitioner seeks permission of this Court to withdraw this Writ Petition with liberty to the Petitioner to challenge the Order No. TN/Ins-II/51-00-008667-000-0402/E.I.O.P. No. 174/2005 dated 16.02.2017 (copy of which was received by the Petitioner on 24.07.2020) in proceedings under Section 75 of the Act before the jurisdictional Employees State Insurance Court. He has filed a memo dated 14.08.2020 to that effect, which is placed on record.

5. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Regional Director,
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3. The Recovery Officer,
Employees State Insurance Corporation,
Regional Office - Chennai, Panchdeep Bhavan,
No. 143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

+1cc to M/s.P.C.Harikumar & Associates, Advocate, SR.NO. 26752
+1cc to Mr.SP.Srinivasan, Advocate, SR.NO. 26916

W.P. No. 2177 of 2020

PP(CO)
KKV/23/09/2020