

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.17830 of 2020
and W.M.P.No.22114 of 2020

M/s.Visanthi & Co
Rep.by its Proprietor Mr.N.R.Sami
No.18/116, Capetown Colony
Appanaicken Palayam
Thudialur, Coimbatore - 641 034. ..Petitioner

-Vs-

Deputy Director
Employees' State Insurance Corporation
Sub-Regional Office, No.1897, Trichy Road
Ramanathapuram, Coimbatore - 641 045. ..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the respondent bearing Ref.No.56-00-108089-000-1009/INS.III/SRO/3945/2019 dated 28.02.2020 to quash the same and matter may be reverting back to the respondent to pass the reasoned order according to the records and documents available with the petitioner.

For Petitioner : Mr.P.Thangaraju
For Respondents : Mr.Ramachandra Murthy - for ESI

सतयमेव जयते
O R D E R

The prayer sought for herein is to call for the records of the impugned order passed by the respondent bearing Ref.No.56-00-108089-000 1009/INS.III/SRO/3945/2019 dated 28.02.2020 to quash the same and matter may be reverted back to the respondent to pass the reasoned order according to the records and documents available with the petitioner.

2. The petitioner is already under the net of the provisions of the ESI Act and in this regard a notice has been given for hearing to determine the due payable towards ESI contribution by the petitioner. However, due to unforeseen reasons, the petitioner seems to have not appeared pursuant to the notice issued by the ESI authorities. Therefore, they proceeded with

the finalization of the determination of course based on the available records and passed the determination order on 28.02.2020, quantifying a sum of about Rs.7.00 lakhs as due to be paid by the petitioner towards ESI contribution.

3. In this context, it is the grievance of the petitioner that, though against the impugned order dated 28.02.2020, an appeal has been provided under the provisions of the ESI Act before the ESI Court, for invoking such appeal provision for filing the appeal, there has been a limitation and within the limitation period, due to COVID-19 situation, the petitioner could not approach the ESI Court, thereby now the petitioner having no other option, approached this Court by invoking Article 226 of the Constitution of India, seeking the aforesaid relief in this writ petition, challenging the order dated 28.02.2020, which is nothing but determination order under Section 45A of the ESI Act.

4. Heard Mr.R.Thangaraju, learned counsel for the petitioner, who would submit that, insofar as the quantification is concerned, admittedly it is not based on any records, as the petitioner could not appear before the ESI authorities and therefore what has been quantified is a very huge amount. According to the learned counsel for the petitioner, the overall quantification, if at all is made based on the documents to be filed by the petitioner, it shall be certainly less than 40% of the amount now quantified. Therefore, since such exorbitant amount has been quantified by the impugned order, unless the same is intervened and one more chance is given to the petitioner to put forward their case before the ESI authorities, the petitioner would be greatly prejudiced and therefore, he seeks the indulgence of this Court to set aside the impugned order and remitting back the matter to the ESI authorities.

5. Heard Mr.Ramachandra Murthy, learned Standing Counsel for the respondent ESI Corporation who, on instructions would submit that, as against the impugned order appeal is provided under the provisions of the ESI Act and the same should have been exhausted by the petitioner and without exhausting the same, the petitioner cannot approach this Court by invoking Article 226 of the Constitution of India.

6. Learned Standing Counsel would further submit that, before the appellate Court under the provisions of the Act, the petitioner should file an appeal by making a deposit of 25% of the quantified amount as a condition precedent and in order to avoid such deposit as a pre-condition, the petitioner purposely delayed the matter and approached this Court invoking Article 226 of the Constitution of India. Therefore, the same cannot be entertained, he contended.

7. I have considered the submissions made by the learned counsel appearing for both sides and have perused the materials placed on record.

8. The plea now made by the learned counsel for the petitioner is that, if a chance is given to the petitioner to put forward his case, certainly they can convince the ESI authorities to reduce the quantified amount as has been quantified in the impugned order dated 28.02.2020, which according to them is a exorbitant amount based on no records.

9. Be that as it may. An appeal remedy has been provided, where all these grounds can very well be raised by the petitioner.

10. However, when they approach the appellate authority / ESI Court, certainly under the provisions of the Act, as a pre-condition, they have to make at least 25% of the quantified amount under the determination order. In this regard, the learned counsel for the petitioner has fairly submitted that, the petitioner would be ready and willing to file an appeal by making a deposit of 25% of the quantified amount as a pre-condition, hence this Court feels that the petitioner can be directed to approach the appellate Court under the provisions of the ESI Act and in that case, whatever the grounds now urged by the petitioner's side can very well be agitated and the issue can be decided on merits as to whether the quantification now made in the impugned order is justifiable or not.

11. In that view of the matter, this Court is inclined to dispose of this writ petition, with the consent of both parties, at the admission stage itself, with the following order.

- (a) The petitioner is permitted to approach the appellate Court ie., ESI Court under the provisions of the ESI Act (Section 45AA).
- (b) When such an appeal is filed, the petitioner shall deposit 25% of the quantified amount as per the impugned order dated 28.02.2020 as a pre-condition for filing the appeal.
- (c) Such appeal shall be filed by the petitioner within a period of two weeks from the date of receipt of a copy of this order.
- (d) It is made clear that within the period stipulated above, if the petitioner does not approach the appellate authority by filing an

appeal with a pre-deposit of 25% of the quantified amount as per the impugned order, the appeal need not be entertained by the appellate authority / ESI Court.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. Registry is directed to return the original impugned order to the learned counsel for the petitioner, after getting necessary acknowledgement.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kst
To

Deputy Director
Employees' State Insurance Corporation
Sub-Regional Office, No.1897, Trichy Road
Ramanathapuram, Coimbatore - 641 045.

+1cc to Mr.*, Advocate, S.R.No.40008

+1cc to Mr.*, Advocate, S.R.No.40210

W.P.No.17830 of 2020

pa(CO)
rv(29/01/2021)

सत्यमेव जयते
WEB COPY