



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.5692 of 2011
and
M.P.Nos.1& 2 of 2011
&
W.M.P.No.20808 of 2017

M.K.Krishnan and Sons,
Rep. by its Partner,
No.260, Shenbagam Pillai Street,
Tirunelveli Town - 627 006.

...Petitioner

-Vs-

1. Principal Secretary to Government,
Labour and Employment (L.1) Department,
Fort St.George,
Chennai - 600 009.
2. Joint Director,
Sub Regional Office,
Employees State Insurance Corporation,
Tirunelveli.
3. Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 34.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records from the file of the first respondent herein in his proceedings in G.O.(D) No.652 dated 16-12-2010 and to quash the G.O.(D) No.652 dated 16-12-2010 issued by the first respondent.

For Petitioner : Mr.S.Jayaraman

For R1 : Mr.S.Arumugam
Government Counsel

For R2 & R3 : Mrs.S.Jayakumari



ORDER

Section 91-A of the Employees' State Insurance Act, 1948 empowers the Government to grant exemption under Section 87, 88, 90 and 91 prospectively. This provision was amended to the Employees' State Insurance (Amendment) Act, 2010 with effect from 01.06.2010, for grant of prospective exemption only. Prior to this amendment, the Government was empowered to grant retrospective exemptions also.

2. In the present case, the petitioner herein had sought for exemption in their application dated 12.03.2008 for the period between 01.01.1999 to 31.12.2003. Apparently, the application itself was made for retrospective exemption. At the time when the application was made, there was no amendment and possibly the petitioner would have been right in seeking for retrospective exemption. However, when the impugned Government Order was passed on 16.12.2010, the amendment had come into effect and therefore, the petitioner's claim could not have been considered.

3. Though the Government had rejected the petitioner's request on some other grounds by making a comparison of the scheme provided by the Management and the ESI scheme, this Court does not intend to go into the validity of such a comparison for the simple reason that the retrospective claim for exemption itself is not permissible after the amendment of Section 91-A, with effect from 01.06.2010.

4. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

hvk/ata

To

1. The Principal Secretary to Government,
Labour and Employment (L.1) Department,
Fort St. George,
Chennai - 600 009.



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2. The Joint Director,
Sub Regional Office,
Employees State Insurance Corporation,
Tirunelveli.

3. The Regional Director,
Employees State Insurance Corporation,
No.143, Sterling Road,
Chennai - 34.

+1cc to Mr.S.Jayakumari, Advocate, S.R.No.54756

+1cc to Mr.S.Jayaraman, Advocate, S.R.No.55186

+1cc to the Government Pleader, S.R.No.55382

W.P.No.5692 of 2011

GPL (CO)
SU (15/11/2021)