



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12906 of 2021

M/s.Aarthi Enterprises
rep. by its Partner Mrs.G.Mythili
No.1, Chelliamman Colony,
2nd Street, Peravallur,
Chennai 600 082.

... 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 Authorized Officer,
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.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records on the file of the 2nd Respondent in connection with the two impugned Demand Notices for the period from December 2019 to May 2021, both dated 04.05.2021 vide Ref.No.51001227040001499/482021325 Ins-I & TN/INS-I/51-00-122704-000-1499 and quash the same.



For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.C.V.Ramachandramurthy

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O R D E R

Petitioner has come up with this Writ Petition challenging the two impugned Demand Notices issued by the 2nd Respondent herein for the period from December 2019 to May 2021, both dated 04.05.2021 vide Ref.No.51001227040001499/482021325 Ins-I & TN/INS-I/51-00-122704-000-1499.

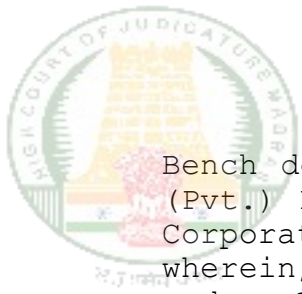
2. Heard the learned counsel on either side and perused the material documents available on record.

3. Learned counsel appearing for the Respondent/ESI Corporation contended that, the Petitioner has got an alternative remedy to approach the ESI Court under Section 75(g) of the Employees' State Insurance Act, 1948. He went on to state that, contribution has been paid prior to December 2019 and since, the employer has not remitted the amount, there was a demand notice in Form C18 (Actual) dated 04.05.2021 demanding payment of Rs.2,02,102/- for the months December 2019 and January 2020. He pointed out that, there is a typographical error in the Demand Notice. However, when the Actuals are not paid, if the Petitioner has any grievance, the remedy is only before the ESI Corporation.

4. It is no doubt true that, Section 75(g) of the ESI Act is very clear that, parties need to approach the ESI Court for deciding any type of dispute. After the introduction of Section 45-AA, if the employer is not satisfied with the order passed under Section 45-A, he may prefer an Appeal to the Appellate Authority within sixty days of the date of such order. After adjudication, it is mandatory on the part of the ESI Corporation to pass an order under Section 45-AA of the Act, when the Actuals mentioned in Form C18 have not been paid. Form C18 is only a notice and cannot be treated as determination.

5. It is contended that, no order under Section 45-A is required to be passed before the proceedings under Section 45-B. This submission is not correct. The status of the payment need to be ascertained after an opportunity is given to the employer. After inspection under Section 45, no proceedings under Section 45-A has been passed in this case by the Respondent/ESI Corporation, which fact has been admitted.

6. In this regard, it is worth referring to a Division



Bench decision of this Court in the case of Madras Hotel Ashoka (Pvt.) Limited vs. Regional Director, Employees' State Insurance Corporation, Madras, reported in 2004 (2) LLN 1071 (Mad), wherein, it has been held that, the order needs to be passed under Section 45A after inspection, in order to enable the parties to work out their remedy before the alternative forum. For better appreciation, the order passed by the Division Bench is extracted hereunder:

" It is an admitted position that after the inspection was made by the Inspector under S. 45 of the Employees' State Insurance Corporation Act, no further proceedings were initiated under S. 45-A of the said Act for determination of the liability of the petitioner appellant. The learned counsel for the Coporation fairly admits that the order ought to be passed even without affording any opportunity to the appellant. We do not agree with the learned Single Judge that there was no necessity of holding any enquiry under S. 45-A of the Act. It is an admitted position that what was done was only the inspection under S. 45 of the Act. We would naturally expect an enquiry thereafter under S. 45-A of the Act. Learned counsel for the Corporation says that the department is ready to reconsider the matter again. That is, according to us, a very fair stand taken by the learned counsel. In that view, the set aside the order the learned Single Judge and send back the matter to the department for initiating an enquiry under S. 45-A of the Act. Needless to mention that the enquiry shall be finished as early as possible and within two months of its initiation. With this, we allow the writ appeal and remit the matter to the concerned authority for initiating the proceedings under S. 45 A of the Act. The sum of Rs. 17,770 deposited by the appellant shall, however, remain undisturbed and it will depend upon the final orders passed in the enquiry. ..."

7. In the case on hand, since adjudication is absent and there is no order under Section 45-A, this Court directs the Petitioner/employer to send a reply to the Respondent/ESI Corporation, by taking note of the impugned order as a Demand Notice, within a period of two weeks from the date of receipt of a copy of this order, and participate in the enquiry that may be conducted.



8. In case, the Petitioner/employer fails to co-operate with the enquiry, based on the Actuals, the Respondent/ESI Corporation is at liberty to pass an order under Section 45-A of the Act, within a period of two months thereafter and recovery proceedings under Section 45B can be invoked for recovery of Actuals. After determination, it is open to the Petitioner/employer either to pay the Actuals or to avail the Appeal remedy either under Section 45AA or under Section 75 of the ESI Act.

The Writ Petition is ordered accordingly. No costs. Consequently, connected W.M.P.No.13713 of 2021 is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Regional Director,
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+1cc to Mr.S.Vijaya Kumar, Advocate, S.R.No.29639

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, S.R.No.30057

W.P.No.12906 of 2021

PMK(CO)
CB(22/07/2021)