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W.P.No.30246 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2022

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.30246 of 2022
and W.M.P.Nos.29676 &29678 of 2022

M/s. Jaya Matriculation Higher
Secondary School,
(Under the Management of Jaya
Educational Trust),
Rep. by its Managing Trustee,
CTH Road, Tiruninravur,
Thiruvallur District – 602024.

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.

2.Employees' State Insurance Corporation,
Rep. by its Regional Director,
143, Sterling Road, Panchdeep Bhavan,
Chennai – 600 034.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 02.08.2022 bearing No.TN/Ins VIII/51-00-101275-000-1302/C18 Adhoc-883/22 and to quash the same and direct the respondents to waive/write – off the amount of past contributions under Section 91-C of the ESI Act, 1948.



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For Petitioner : Mr.P. Muthusamy

For Respondents : Mr.G. Nanmaran,
Special Government Pleader [R1]

Mr.K. Prabakar,
Standing Counsel [R2]

ORDER

This Writ petition has been filed challenging the order dated 02.08.2022 passed by the second respondent under the Employee's State Insurance Act, 1948 (hereinafter referred to as “ESI Act”) directing the petitioner to pay a sum of Rs.1,16,15,382/- towards ESI contributions for the periods from August 2013 to December 2021.

2. Heard the learned counsel for the petitioner. Mr.G. Nanmaran, learned Special Government Pleader, accepts notice on behalf of the first respondent and Mr.K. Prabakar, learned standing counsel, accepts notice on behalf of the second respondent. By consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3. The petitioner has challenged the impugned order on the following



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grounds :

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a) no opportunity of personal hearing was granted to the petitioner before passing of the impugned order under Section 45-A of the ESI Act.

b) the respondents failed to consider the representation of the petitioner dated 10.10.2022.

c) the findings of the second respondent that the petitioner Institution had appointed 199 employees for wages is incorrect.

4. The petitioner claims that the amount determined by the second respondent under the impugned order is incorrect. A representation was sent by the petitioner that the determination is not based on any evidence.

5. Admittedly, there is an appellate statutory remedy available to the petitioner as against the impugned order under Section 75 of the ESI Act, before the ESI Court.

6. The learned counsel for the petitioner would submit that if the petitioner has to exercise the statutory appellate remedy, they will have to pay the mandatory pre-deposit amount of 50% under Section 75 of the ESI Act. According to him, since the petitioner is not liable to pay the determined



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amount as per the impugned order, they cannot be directed to approach the ESI Court under Section 75 of the ESI Act, 1948.

7. However, as seen from the provisions of Section 75 of the ESI Act, 1948, the ESI Court is having the power to waive or reduce the pre-deposit amount, provided, the petitioner is able to give sufficient reasons while seeking for such waiver or reduction of the pre-deposit amount. The petitioner's interest will be adequately protected, if a direction is issued to the ESI Court as and when a statutory appellate remedy is exercised by the petitioner as against the impugned order before the ESI Court under Section 75 of the Act, 1948, to consider the waiver/reduction of the pre-deposit application in the light of the grounds raised in this Writ Petition viz., that the petitioner was not afforded sufficient opportunity by the second respondent before passing of the impugned order dated 02.08.2022.

8. For the foregoing reasons, this Court is of the considered view that the petitioner has approached this Court under Article 226 of the Constitution of India without exercising the statutory appellate remedy available under Section 75 of the ESI Act, 1948. Therefore, the petitioner will have to necessarily approach the ESI Court, if aggrieved by the impugned order



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passed by the second respondent.

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9. In the light of the discussion referred to supra, this Writ Petition is disposed of, by directing the petitioner to file the Statutory Appeal before the appropriate ESI Court as against the impugned order dated 02.08.2022 passed by the second respondent, within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the Statutory Appeal, the concerned ESI Court shall entertain the waiver application filed by the petitioner under Section 75 (2-B) of the ESI Act, 1948, seeking for waiver/reduction of the mandatory pre-deposit amount and pass final orders on merits and in accordance with law, after giving due consideration to the reasons given by the petitioner seeking for waiver/reduction.

10. No coercive steps shall be taken by the respondents for a period of two (2) weeks from the date of receipt of a copy of this order to enable the petitioner to file the Statutory Appeal under Section 75 of the ESI Act.



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ABDUL QUDDHOSE,J.

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11. With the aforesaid directions, this Writ Petition is disposed of. No costs. Connected miscellaneous petitions are closed.

15.11.2022

Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

1. Principal Secretary to Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.

2.Regional Director,
Employees' State Insurance Corporation,
143, Sterling Road, Panchdeep Bhavan,
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