



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.11605 of 2022

and

W.M.P.(MD)Nos.8200 to 8202 of 2022

V.A.S.P Salt Refineries,
Door No.1/152-1,
Therkukal Medu,
Ottapidram,
Tuticorin District,
Represented by its Partner, Mr.Balasankar

... Petitioner

/vs./

The Assistant / Deputy Director,
Sub Regional Office,
Employees' State Insurance Corporation,
Panchdeep Bhawan, ESIC Complex,
Salai Street, Vannarapettai,
Tirunelveli – 627 003.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the



records relating to the impugned Form C-11 issued by the respondent dated 02.10.2018 and quash the same as illegal and consequently direct the respondent to refund the ESI contributions paid by the petitioner for the period between 07/18 to 09/20 within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mr.C.Karthik

Standing Counsel

ORDER

The petitioner herein challenges the Form C-11, dated 02.10.2018 issued by the respondent herein for the purpose of determining the contribution to be paid by the petitioner establishment.

2. Though the petitioner herein had initially submitted themselves to the provisions of the Employees State Insurance Act, 1948 (hereinafter referred to as 'ESI Act'), they had thereafter relied upon the information supplied by the respondent under the Right Information Act, whereby it was stated that the factory situated at Therkukalmedu,



Ottapidaram, Tuticorin District, was under an non-implemented area. In view of the reply given by the respondent, the petitioner herein now claims that the provisions of the ESI Act is not applicable to their establishment.

3. The issue as to whether the provisions of the ESI Act would be applicable to the petitioner herein is, based on factual aspects and it is always open to the petitioner to raise the same before the authority in the pending proceedings under Section 45A of the ESI Act, which relates to determination of contribution in certain areas. The Hon'ble Supreme Court in the case of ***Bharat Heavy Electricals Limited Vs., ESI Corporation*** reported in **2008 3 SCC 247** has held that in the proceedings initiated under Section 45A of the ESI Act, an immediate employer or principal employer may also show that they are not liable to deposit any contribution on behalf of the employees, as the establishment in question did not come within the purview of the Act. Since the petitioner now claims that he is exempted from the purview of the ESI Act, I am of the view that such a ground may be raised before the



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authority in the pending proceedings under Section 45A. Since the ultimate determination of the contribution would be on the basis of the applicability of the provisions of the ESI Act to the petitioner establishment, it would be appropriate that the issue with regard to the applicability of the ESI Act could be decided by the authority as the preliminary issue before determining as to the liability of the petitioner establishment to pay the contribution.

4. In the light of the above findings, there shall be a direction to the respondent herein to give opportunity to the petitioner to put forth their objection with regard to the applicability of the provisions of the ESI Act to their establishment and decide the question of such applicability as a preliminary issue before determining the liability of the establishment to pay the contribution. The petitioner shall raise fresh preliminary objection by way of an application, within a period of fifteen (15) days from the date of receipt of a copy of this order. On receipt of such application, the respondent herein shall taken up the same as a preliminary issue and pass final order, after giving due opportunity of



personal hearing to the petitioner, within a period of thirty (30) days from the date of receipt of the petitioner's application.

5. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

22.07.2022

Index : Yes / No

Internet : Yes / No

Rmk

To:

The Assistant / Deputy Director,
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M.S.RAMESH, J.

Rmk

Order made in
W.P.(MD)No.11605 of 2022

Dated:

22.07.2022