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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.1626 of 2023
and W.M.P. No.1745 of 2023

M/s.Sri Amman Fabrication
Rep. by its Proprietor Mr.K.Suresh
1/478M, Lakshmi Nagar, M.G. Pudur Post,
Coimbatore – 641 006.

Petitioner

vs.

1.The Employees State Insurance Corporation,
Rep. by its Deputy Director,
Sub-Regional Office,
No.1897, Trichy Road, R.N.Puram,
Coimbatore – 641 045.

2.The Recovery Officer,
Employees State Insurance Corporation,
Sub-Regional Office,
No.1897, Trichy Road, Panchdeep Bhavan,
Ramanathapuram, Coimbatore.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Ref. No.56-00-11-88060000999/INS.IV SRO dated 10.05.2022 and impugned order of the 2nd respondent in Ref. No. CBE/RECY/CP-3/56/118806/0999 dated 25.11.2022 and quash the same and remand the matter for reassessment.



For Petitioner : Mr.B.Kumarasamy
For Respondents : Mrs.S.Jayakumari
Standing Counsel

ORDER

This writ petition has been filed to call for the records of the 1st respondent in Ref. No.56-00-11-88060000999/INS.IV SRO dated 10.05.2022 and impugned order of the 2nd respondent in Ref. No. CBE/RECY/CP-3/56/118806/0999 dated 25.11.2022 and quash the same

2. Heard Mr.B.Kumarasamy, learned counsel for the petitioner and Mrs.S.Jayakumari, learned Standing Counsel for respondents.

3. The main ground that has been taken in the present writ petition while challenging the impugned orders passed by the respondents 1 and 2 is that the respondent Corporation determined the contribution on the assumed notional charges payable to the employees even without ascertaining whether the employees were actually working with the establishment. The other ground that has been raised by the learned counsel for the petitioner is that the identification of the beneficiaries is the primary responsibility of the respondent

Corporation and the quantification of the dues without identifying the



beneficiaries is unsustainable. To substantiate the same, the judgment of the Apex Court in CA No.5717 of 2001 and CA No.5718 of 2001 dated 03.04.2008 was brought to the notice of this Court. By relying upon this order, the learned counsel submitted that quantification of the dues without identifying the beneficiaries is unsustainable and if ultimately the beneficiaries are not able to be identified, the ESI corporation will be retaining the amount without any purpose and that will go against the very object of the ESI Act.

4. In the considered view of this Court, before going into the merits of the case, it is seen that the petitioner has an efficacious alternative remedy by way of an appeal before the ESI Tribunal under Section 45AA of the ESI Act. The said appeal has to be filed within the time prescribed under Regulation 31-D by depositing 25% amount of the contribution fixed. Admittedly, this remedy has not been availed by the petitioner. That apart, the impugned order was passed by the respondent in the year 2018 and the petitioner has not chosen to question the same till now. Hence, there is also laches on the part of the petitioner in approaching this Court.

5. In view of the above, both on the ground of laches and on the ground that the petitioner has an efficacious alternative remedy before the ESI



Tribunal, this Court is not inclined to entertain this writ petition and accordingly, this writ petition stands dismissed. Liberty is given to the petitioner to workout their remedy in accordance with law, if so advised. The Tribunal shall entertain the appeal filed by the petitioner subject to the condition the petitioner deposits 50% of the amount of contribution fixed by the respondent within a period of two weeks from the date of receipt of the copy of this order.

6. The Registry is directed to return back the original impugned order to the learned counsel for the petitioner after retaining a copy of the same to enable the petitioner to work out his remedy before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

24.01.2023
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

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N. ANAND VENKATESH, J.

SSR

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