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W.P.Nos.3612 & 3615 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.3612 & 3615 of 2023 and
W.M.P.No.3692 of 2023

M/s. Archanas Traders
A Partnership Firm
Represented by its Partner
Mr.V.Mohanarangan
No.10, Loganathan Nagar
3rd Street, Choolaimedu
Chennai – 600 094.

.. Petitioner in
both W.Ps

vs

1. The Deputy Director / Authorized Officer
Regional Office
Employees' State Insurance Corporation
No.143, Sterling Road, Nungambakkam
Chennai – 600 034.

2. The Recovery Officer
Office of the Recovery Officer
Regional Office
Employees' State Insurance Corporation
No.143, Sterling Road, Nungambakkam
Chennai – 600 034.

.. Respondents in
both W.Ps

Prayer in W.P.No.3612 of 2023 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the Certificate dated 12.01.2023 bearing Ref. No.TN/Ins-V/51-00-111513-000-1099 of the first respondent and quash the same;



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Prayer in W.P.No.3615 of 2023 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certorari to call for Notice of Demand – Form No.ESI CP 2 dated 24.01.2023 bearing Ref. No.51001115130001099/CP/531152/CCR-113570 of the second respondent and quash the same.

For Petitioner in : Ms.G.Kiruthika
both W.Ps

For Respondents in : Mr.T.N.C.Kaushik
both W.Ps Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the certificate issued by the first respondent dated 12.01.2023 and the notice of demand issued by the second respondent dated 24.01.2023, directing the petitioner to deposit a sum of Rs.2,58,089/-.

2. The case of the petitioner is that they applied and got the ESI Code from April, 2018 onwards in ESI Code No.51-00111513-000-1099. The further case of the petitioner is that they received the certificate issued under Section 45C of the ESI Act for recovery of a sum of Rs.2,58,024/-, for arrears of contribution for the period covering September, 2016 to March, 2018, with appropriate interest.



3. The specific case that was pleaded by the petitioner is that the certificate as well as the consequential demand has been raised by the respondents even without conducting an enquiry and passing orders under Section 45A of the Act. Therefore, according to the petitioner, the impugned certificate and the demand are vitiated for violation of principles of natural justice. Aggrieved by the same, these writ petitions have been filed before this Court.

4. When the matter was taken up for hearing, the learned Standing Counsel appearing on behalf of the respondent Corporation brought to the notice of this Court that the notice under Section 45A was dispatched to the petitioner and it was also received and acknowledged by the petitioner on 11.03.2021. That apart, the personal hearing was fixed on 16.07.2021 and no one from the side of the petitioner appeared for the enquiry. Left with no other alternative, the competent authority proceeded to pass orders under Section 45A of the ESI Act and determined the total contribution of Rs.1,56,585/-. The learned Standing Counsel further submitted that, since the contribution amount was not paid, the first respondent proceeded to issue certificate under Section 45C to 45I of the ESI Act to recover a sum of Rs.2,58,024/-. As a consequence, the second respondent issued a notice of demand to the petitioner and the petitioner was directed to immediately



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pay the amount within a period of fifteen days, failing which, recovery proceedings will be initiated.

5. It was further contended by the learned Standing Counsel appearing on behalf of the ESI Corporation that the petitioner has come before this Court with unclean hands, by suppressing vital facts. On this ground alone, the learned Standing Counsel sought for the dismissal of these writ petitions.

6. *Per contra*, the learned counsel for the petitioner vehemently contended that the petitioner was repeatedly attempting to get the particulars from the department and no particulars were furnished to the petitioner and the petitioner was not even aware about the enquiry that was conducted by the competent authority. The learned counsel further submitted that, if at all the order was passed under Section 45A of the ESI Act, such an order was passed behind the back of the petitioner and it is violative of the principles of natural justice. Therefore, it was contended that the consequent issuance of certificate and the recovery notice are bad in law.

7. In the considered view of this Court, the petitioner has come before this



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Court with a specific case that they were not given any notice and the recovery proceedings have been initiated even without passing orders under Section 45A of the ESI Act. However, it is clear from the records, that were produced by the learned Standing Counsel that, the order under Section 45A of the Act has in fact been passed by the competent authority on 27.07.2022.

8. The specific case of the petitioner is that they started paying contribution only from April, 2018, when they applied for ESI Code. However, on carefully going through the order passed under Section 45A of the ESI Act, it is seen that the contribution has been calculated for the period from September, 2016 to March, 2018. This period, for which the contribution is sought for, is contested by the petitioner.

9. Under normal circumstances, a writ petition will not be entertained as against the order passed against Section 45A of the Act, since there is an efficacious alternative remedy of appeal available under Section 45AA of the ESI Act. However, since the petitioner has come up before this Court with a specific case that they were not aware about the proceedings and an opportunity must be given to the petitioner, this Court deems it fit to give one last opportunity to the



petitioner, subject to imposing certain conditions.

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10. In the light of the above discussion, these writ petitions are disposed of in the following manner:

a. The petitioners are directed to deposit a sum of Rs.1,60,000/- before the second respondent within a period of two weeks from the date of receipt of a copy of this order;

b. Upon complying with the directions issued in clause (a), the order passed under Section 45A by the first respondent on 27.07.2021 shall stand revoked and the matter will stand remanded back to the file of the first respondent and the first respondent shall issue a fresh notice to the petitioner and afford an opportunity to the petitioner and thereafter pass orders in accordance with law. The petitioner upon satisfying the direction given in clause (a) shall inform the first respondent by way of a representation within a period of two weeks from the date of the deposit and thereafter, the first respondent shall issue a fresh notice and conclude the proceedings within a period of three months thereafter;



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c. If the petitioner fails to deposit the amount, as directed by this Court in clause (a), the certificate dated 12.01.2023 issued by the first respondent and the notice of demand dated 24.01.2023 issued by the second respondent shall stand revived and it will be left open to the respondents to proceed further to recover the amount from the petitioner and;

d. The impugned certificate issued by the first respondent and the notice of demand issued by the second respondent shall be kept in abeyance, depending upon the compliance of the above directions.

There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index: Yes/No
Neutral Citation: Yes/No
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09.02.2023

To

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N.ANAND VENKATESH, J

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