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W.P.No.21550 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 21.07.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P.No.21550 of 2023 and  
W.M.P.No.20923 and 20925 of 2023**

M/s.Shree Vigneshkumar Jewelers,  
Represented by Partner Mr.Vigneshkumar,  
No.170, NSC Bose Road,  
Chennai - 600 079.

... Petitioner

Vs.

The Deputy Director,  
Employee State Insurance Corporation,  
No.143, Sterling Road,  
Nungambakkam,  
Chennai - 600 034.

... Respondent

**PRAYER :** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TN/INS.VIII/51-00-100883-000-1002/C18/Adhoc-5/23 dated 22.05.2023 and quash the same as illegal contrary the provisions of the ESI Act and in violation of principles of natural justice and fair play and direct the respondent to grant opportunity for production of salary / wages register.

For Petitioner : Mr.S.Sridharan

For Respondents : Mrs.S.Jaya Kumari for ESI



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## ORDER

This Writ Petition has been filed challenging the order of the respondent / Employees State Insurance Corporation dated 22.05.2023 determining the contribution under the Act on Adhoc basis for the period from April 2022 to October 2022 in spite of the fact that there were only two employees drawing salary of more than Rs.21,000/- each per month and therefore, the petitioner Firm is outside the purview of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'ESI'). It is also contended that no opportunity was given to the petitioner Firm before passing the impugned order.

2. The case of the petitioner is that the petitioner is running a Firm under the name and style of M/s.Shree Vigneshkumar Jewelers and during the period in question, there were only two employees drawing a salary of more than Rs.21,000/- and in spite of producing the salary / wages register, the respondent / ESI Corporation had issued a show cause notices dated 13.12.2022 and 16.12.2022 proposing to determine and recover the amount



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of contribution under Section 45A of the ESI Act assuming that there are 26 employees drawing average wages of Rs.11,500/- per month. The petitioner Firm filed its reply on 09.02.2023 and a representative of the petitioner Firm appeared before the respondent / ESI Corporation on 23.02.2023 explaining the reasons, as to why, they are not liable to contribute under the ESI Act. Even thereafter, a notice dated 29.03.2023 was issued by the respondent / ESI Corporation and the case was posted for hearing on 28.04.2023. Though the petitioner filed its reply on 26.04.2023 seeking for adjournment, the impugned order dated 22.05.2023 was passed confirming the demand. Aggrieved by the same, the petitioner Firm has filed the present Writ Petition with the aforesaid prayer.

3. The learned counsel for the petitioner Firm relied upon the Gazette Notification issued by the Government of Tamil Nadu dated 22.12.2016, an amendment was notified in the Employees' State Insurance (Central) Rules, 1950, wherein, in Rule 50, in spite of "fifteen thousand rupees", "twenty one thousand rupees" has been substituted. Relying upon



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this notification, the learned counsel for the petitioner contends that the impugned order is passed without considering the amendment and hence, the same is liable to be set aside.

4. The learned counsel for the respondent / ESI Corporation submitted that if the petitioner is aggrieved by the order passed by the respondent Corporation, he has an alternative efficacious remedy as provided under Section 45AA of the Act and hence, the Writ Petition is premature. Even in the impugned order dated 22.05.2023, in the foot note, it is clearly specified that if the petitioner is dissatisfied with the determination of contribution, he is entitled to make an appeal to the RO/SRO (Appellate Authority) against the above order in accordance with the provisions of Section 45AA of the Act.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



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6. As rightly pointed out by the learned counsel appearing for the respondent / ESI Corporation which is clearly mentioned in the impugned order itself that the order is appellable under Section 45AA of the Act and the petitioner has approached this Court prematurely without availing the efficacious alternative remedy available to him under the Statute.

7. Accordingly, this Writ Petition is disposed of with a direction to the petitioner to file an appeal before the Appellate Authority under the Act within a period of two weeks from the date of receipt of a copy of this order and the Appellate Authority shall dispose of the same within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC: Yes / No  
Index : Yes / No  
Speaking Order : Yes / No

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To

The Deputy Director,  
Employee State Insurance Corporation,  
No.143, Sterling Road,  
Nungambakkam,  
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**M.DHANDAPANI, J.**

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