



WEB COPY



W.P.No.33978 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33978 of 2017

And

W.M.P.Nos.10307 of 2018 and 37696 and 37697 of 2017

A.P.Travels and Tours India (P) Ltd.,
Rep. by its Director
P.Kamal

... Petitioner

Vs.

1.The Deputy Director
Employees State Insurance Corporation
Sub Regional Office,
Coimbatore – 641 045.

2.The Recovery Officer,
Employees State Insurance Corporation
Sub Regional Office,
Coimbatore – 641 045.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records in order in Ref.No.CBE/RECY/CP-3/56/110551/1006 dated 21.11.2017 passed by the second respondent and quash the same.

For Petitioner : Mr.B.Gopalakrishnan
for M/s.R.Manoharan

For Respondents : Mr.T.N.C.Kaushick



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for records in order in Ref.No.CBE/ RECY/CP-3/56/110551/1006 dated 21.11.2017 passed by the second respondent and to quash the same.

2.The case of the petitioner is that the petitioner is involved in operating tours and travels and due to sickness in the industry, the petitioner was not in a position to remit ESI dues on time for the regular employees. The Social Security Officer of the second respondent inspected the petitioner's establishment on 22.05.2015 and based on his report, the first respondent assessed the dues without identification of the beneficiaries and the second respondent issued prohibitory order. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted that before issuing prohibitory order, there must be adjudication to point out how much employees are employed with the petitioner, however, without proper adjudication, the second respondent mechanically passed the prohibitory order in terms of Rule 26(1) of the



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second schedule to the Income Tax Act, 1961 read with Sections 45-C to 45-I of the ESI Act, 1948, which is not sustainable one.

4.Per contra, the learned counsel appearing for the respondents submitted that the petitioner is a defaulter. The petitioner is covered under the ESI Act with effect from 05.03.2011 and remitted contribution for the period from 03/2011 to 11/2011. The Social Security Officer pointed out contribution payable under the ESI Act after verifying the records produced by the petitioner during the inspection on 22.05.2015. Pursuant to the report of the Social Security Officer, the petitioner was advised to register 168 employees under the ESI Act through online vide letter dated 22.06.2015, however, the petitioner failed to do the same and also not paid the ESI contribution.

5.The learned counsel appearing for the respondents further submitted that unless the petitioner obtain exemption from the State Government, he has to necessarily pay the ESI contribution, however, in the petitioner has not remitted the contribution after 2011. Hence, the impugned order warrants no interference.



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6.Heard the arguments advanced on either side and perused the materials available on record.

7.Perusal of records reveal that the petitioner is covered under the ESI Act with effect from 05.03.2011 and has remitted contribution for the period from 03/2011 to 11/2011. The Social Security Officer pointed out contribution payable under the ESI Act after verifying the records produced by the petitioner during the inspection on 22.05.2015 and pursuant to his report, the petitioner was advised to register 168 employees under the ESI Act through online vide letter dated 22.06.2015, however, the petitioner failed to do the same and also not paid the ESI contribution. Unless the petitioner obtain exemption from the State Government, he has to necessarily pay the ESI contribution. Hence, this Court is not inclined to interfere with the impugned order.

8.The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

22.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No

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To

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