



W.P(MD)No.12341 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
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DATED : 18.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE BATTU DEVANAND**

**W.P.(MD)No.12341 of 2018**  
**and W.M.P(MD)Nos.11212 and 11213 of 2018**

K.Alagar Raja

...Petitioner

**Vs.**

The Deputy Director,  
ESI Corporation,  
Sub Regional Office,  
2<sup>nd</sup> West Street,  
K.K.Nagar,  
Madurai – 625 020

... Respondent

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the impugned order dated 08.02.2018 made in Reference No. 57000397460000005/2820181113/INS III/755/17 and 57000397460000005/2820181056/INS III/756/17 passed by the respondent and quash the same as illegal forthwith.

For Petitioner : Mr.K.Prakash  
for Mr.A.Uthayakumar  
For Respondent : No appearance



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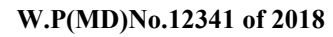
## **ORDER**

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Heard the learned counsel for the petitioner and perused the materials available on record.

2. Though one counsel Mr.G.Murugan filed vakalat on behalf of the respondent and his name is printed in the cause list, there is no representation for the respondent. Though this matter pertaining to the order of the year 2018, till date, no counter affidavit has been filed on behalf of the respondent.

3. The case of the petitioner is that the Petitioner run a Rice Mill in the name and style of Kannan Modern Rice Mill situated at No.105, Samikulam 1st Street, Chinnamanur, Theni - 625 515 from the year 2007 to 13.04.2017. He closed the above said rice mill on 13.04.2017 and he was informed by the Government of Tamil Nadu Commercial Taxes Department that the same was cancelled under the Tamil Nadu Value Added Tax Act, 2006, Registration,



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Insurance Act and sought to set aside the same by allowing this Writ Petition.

7. Having heard the submissions of the learned counsel for the petitioner and upon careful examination of the proceedings impugned in this Writ Petition, it appears that the respondent communicated the impugned proceedings dated 08.02.2018 calling for the explanation of the petitioner within 30 days as to why the assessment should not be made as proposed therein. The reason mentioned in the impugned proceedings for calling for the explanation is that under Section 40 r/w section 39 of the Employees State Insurance Act, 1948, the Principal Employer or Factory/ Establishment covered under the Act is required to pay in respect of every employee, both the employer's contribution and employee's contribution at the rate specified in Rule 51 of ESI General Rules, 1950 (as amended) and contributions are required to be paid in terms of Regulations 29, 31 and 33 of ESI (General) Regulations 1950 into a bank duly authorized by the Corporation except where otherwise provided and within the periods laid down for the purpose.



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8. It is also mentioned that the monthly detail of Contributions is to be submitted in Form 6 at the end of each month as specified under Regulation 32 of the E.S.I. (General) Regulations, 1950. In case of failure to pay contributions in accordance with Regulation 29 read with Regulation 31 of ESI (General) Regulations, 1950, interest @ 6% per annum up to 19.10.1989 @ 12% w.e.f. 20.10.1989 to 31.08.1994 @ 15% from 01.09.1994 to 30.09.2005 and 12% from 01.10.2005 onwards under Regulation 31-A of the ESI (General) Regulations, 1950. It is also mentioned that it is liable to be paid by the principal employer for each day of default or delay in payment of arrears of contributions. It is also made it clear that any interest payable under the ESI Act or the Regulations framed there under may be recovered as arrears of land revenue under Sections 45 C to 45 I of the ESI Act.

9. The allegations made against the petitioner are that he has not paid contributions as per the provisions of law and not



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submitted monthly details of contributions for November 2016 and December 2016. The petitioner also failed to furnish any particulars of the contributions actually due in respect of his employees for the said periods as worked out on the basis of records. It is also alleged that the petitioner has not paid arrears of contribution for the period November 2016 and December 2016 as pointed out in the letter of the respondent dated 08.02.2018.

**10.** Recording all these averments, the respondent issued the impugned proceedings calling for the explanation of the petitioner to proceed further on this issue. It appears that without submitting his explanation with relevant particulars or documents, the petitioner approached this Court by filing this Writ Petition.

**11.** It is settled law that no writ is maintainable against the Show Cause Notice. If the petitioner has any grievance against the allegations made against him in the impugned proceedings, it is open



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for him to put forth all his contentions in the form of explanation before the second respondent. But, without submitting his explanation within the time stipulated therein, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, is nothing but abuse of process of law.

**12.** For the above said reasons, in the considered opinion of this Court, the petitioner failed to make out any case warranting interference of this Court under Article 226 of the Constitution of India.

**13.** Accordingly, this Writ Petition is dismissed.

**14.** No costs.

**15.** Consequently, connected miscellaneous petitions are closed.

**18.08.2023**

Index : Yes / No  
NCC : Yes / No  
CM



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To,  
The Deputy Director,  
ESI Corporation, Sub Regional Office,  
2<sup>nd</sup> West Street, K.K. Nagar,  
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**BATTU DEVANAND, J.**

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