05. 03. 2024

BP
Sl.18
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 3131 of 2024

M/s. CMJ Services Private Limited
Vs.
Employees' State Insurance Corporation & Ors.

Mr. Victor Chatterjee
Mr. Pranav Sharma
..for the petitioner

Mr. Shiv Chandra Prasad
..for the E.S.I. Corporation

Affidavit of service filed in Court today is taken on record.

The petitioner is the employer. The petitioner has challenged the order passed by the Appellate Authority on 20th November, 2023 under which the concerned authority disallowed the appeal arising from an order dated 6th August, 2018. The order dated 6th August, 2018 was passed in proceedings under Section 45-A of the Employees State Insurance Act, 1948 (hereinafter referred to as E.S.I. Act). On perusal of the order dated 11th February, 2022, it appears that for non-payment of the contribution under the E.S.I. Act for the period of January, 2017 to March, 2021 a show cause notice was issued on 17th December, 2022. Despite receipt of the show cause notice, no reply or details of the contribution due to have been collected/received by the employer were produced. The principal employer also did not appear on 17th January, 2022. The employer was, therefore, directed to pay a sum of Rs. 13,53,429/- as contribution for the period of January 2017 to March 2021. This order was challenged under the provisions of Section 45AA of the E.S.I. Act. Before the Appellate Authority, the petitioner claims to have filed a written submission on 30th October, 2023. In the written objection the main ground for non furnishing of the account is that the employer being a service provider had provided services at the office of Reliance Industries Limited at Jamnagar, Gujarat. According to the petitioner, Jamnagar is partially notified area. As the employees were engaged in a non-implemented area, the petitioner says that it had no obligation to contribute or file returns for the employees engaged in such exempted area. The petitioner alleges that the written submission filed on 30th October, 2023 has not been considered by the Appellate Authority while passing the order dated 20th November, 2023.

On perusal of the order dated 20th November, 2023, it is clear that the petitioner has a unit at his registered office at Kolkata which is an implemented area. Assuming without admitting that the petitioner had engaged employees at Jamnagar a partially implemented area for whom no contribution was required to be paid but for the employees engaged in the Kolkata unit (at its registered office), the petitioner was required to make payment of the contribution. The petitioner has not segregated in its written submission or in any other document the number of those employees engaged in an implemented area and a non-implemented area. The petitioner also did not provide for other particulars on the basis whereof the petitioner was justifying the non filing of the returns and non payment of contribution. The petitioner was given several opportunities but did not provide such facts and figures or the relevant books of accounts. All these issues were considered by the Appellate Authority in the order impugned. The Appellate Authority has also dealt with all the points raised by the appellant in the written submission. The order dated 20th November, 2023 is clear. The order does not suffer from any infirmity, irregularity or illegality. The order is also not perverse or upholds the order under appeal in a mechanical manner.

In the aforesaid facts and circumstances, the challenge of the order dated 20th November, 2023 fails. The writ petition is dismissed without however any order as to costs.

(Arindam Mukherjee, J. )