

02.01.2024
Court No. 13
Item No. 275
AP

WPA 27289 of 2023

**M/s Rudra Hyundai Automobile Pvt Limited
Vs.
Assistant Director, Employee State Insurance
Corporation and Anr.**

Mr. Vinay Kr. Shruff
Mr. Dev Kr. Agarwal

.... For the Petitioner.

Mr. Subal Maitra
Mr. Arindam Maitra

.... For the ESIC.

1. The subject matter of challenge is an order dated 11th October, 2023 passed under Section 45A of the ESI Act. By the impugned order, the petitioner/company was found to have suppressed wage and employee payment components under expenditure heads in its books, like “Purchase and Other Direct Expenses”, “Selling and Other Expenses” and “General and Trade Expenses”. In essence, the petitioner was found passing of wages payable to its employees under the aforesaid non-wage expenses and thereby evade ESI deposits.

2. Learned counsel for the petitioner would vehemently argue before this Court that there is violation of natural justice and the order impugned is ex facie perverse.

3. This Court notices that there was an inspection visit made by the authorities on 5th January, 2023 and a second visit on 20th January, 2023. On the second

occasion, a list of documents relating to the accounts of all six units of the petitioner in various parts of West Bengal were asked to be produced. The petitioner produced the same.

4. He was called for a personal hearing on 23rd June, 2023 and 3rd October, 2023. The petitioner attended on 3rd October, 2023 through his representative, who could not produce any letters of authorization. A third opportunity was given on 5th October, 2023 when the petitioner's representative did not turn up before the authorities. The respondents thereafter went on to pass the impugned order on 11th October, 2023. This Court, therefore, finds no violation of principles of natural justice.

5. On the argument of perversity in the impugned order, this Court is of the view that detailed evidence is required to be gone into for the purpose of arriving at any conclusion in that regard. It is not possible for a writ Court to enter into the disputed questions of facts, for example to ascertain as to which part of the head "purchase and other direct expenses" is the wages component.

6. In the aforesaid circumstances, this Court is of the view that the petitioner must avail alternative remedy of appeal under Section 45AA of the ESI Act, 1948.

7. It is made absolutely clear that any observation made by this Court hereinabove, was only for the limited purpose of deciding the maintainability of the writ petition. The appellate authority shall proceed to decide any appeal that the petitioner may prefer against the impugned order uninfluenced by any observation made hereinabove and strictly in accordance with the Act and the Rules framed thereunder.

8. With the aforesaid observations, the writ petition is disposed of without any orders.

9. There shall be no order as to costs.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)