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W.P.No.26747 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

**W.P.No.26747 of 2015**  
**and**  
**M.P.Nos.1 and 2 of 2015**

A.L.Ramachandra

...Petitioner

Vs.

1. The Official Liquidator,  
High Court of Madras,  
Chennai - 600 104.

2. The Sub Regional Office,  
Employee's State Insurance Corporation,  
Panchadeep Complex, 1897,  
Trichy Road, Ramanathapuram,  
Coimbatore.

3. The Recovery Officer,  
The Sub Regional Office,  
Employee's State Insurance Corporation,  
Panchadeep Complex, 1897,  
Trichy Road, Ramanathapuram,  
Coimbatore.

..Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, to call for the records of the impugned notice 01.07.2015 bearing its Ref.No.56000070740000101/CP/153101 passed by the third respondent quash the same as illegal and subsequently direct the second respondent



W.P.No.26747 of 2015

and third respondent to consider the petitioner's representation dated 31.07.2015.

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For petitioner : Mr.M.Aravind Subramaniam  
For R1 : Mr.S.Gopalakrishnan  
For R2 and R3 : No appearance

### **ORDER**

This writ petition is filed seeking to quash the notice dated 01.07.2015 bearing its Ref.No.56000070740000101/CP/153101 issued by the third respondent quash the same as illegal and subsequently direct the second respondent and third respondent to consider the petitioner's representation dated 31.07.2015.

2. The facts in brief as submitted by the learned counsel for the petitioner are as follows:

2.1. The petitioner was running an industry by the name VTX industries, which supplies luxury home linen in Coimbatore. The petitioner's company was doing well until the financial year 2008. However, after that due to global recession and various other factors, the performance of the company started deteriorating.



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2.2. Subsequently, the company took a decision to wind up and accordingly, as per the directions of this Court, an official liquidator took charge of the company and initial wind up procedures as per the orders dated 23.06.2014 passed in C.P.No.151 of 2013, all the affairs of the company went into the hands of the first respondent, the official liquidator.

2.3. Pursuant to the order dated 23.06.2014, the petitioner had approached this Court in C.A.No.792 of 2015 and 793 of 2015 to execute the job and direct the petitioner company to sell their machinery and to pay the statutory dues to the workers and staff of petitioner company under the supervision of the Official liquidator, the first respondent and the same is still pending.

2.4. While so, the second respondent had issued notice dated 01.07.2015 bearing Ref.No.56000070740000101/CP/153101 demanding the petitioner company to pay a sum of Rs.2,84,659/- towards arrears. Wherein as per the notice stated *supra*, the second respondent directed the petitioner company to a sum of Rs.2,83,215/- towards contribution for the



W.P.No.26747 of 2015

period from July 2013 to September 2013 and imposed cost of Rs.1,444/-.

The second respondent had calculated a sum of Rs.93.11 per day payable from 29.04.2015 till the date of payment and in toto payable amount was Rs.2,84,659/-.

2.5. In reply to the demand notice dated 01.07.2015, the petitioner has sent a representation dated 31.07.2015 to the second and the third respondents seeking for extension of time to pay the demanded amount. The said representation was acknowledged by the second and the third respondents but no response.

2.6. Further, the demand notice dated 01.07.2015 sent by the second respondent does not provide any break up details of the arrear amounts arrived at nor the calculation as to how the interest of Rs.93.11 per day was calculated. The demand notice does not specify the interest payable upto the period 28.04.2015.

2.7. As per Section 39 (5) of the ESI Act, it is clear that the second respondent ought to have levied simple interest at the rate of 12% p.a. on the contribution amount.



W.P.No.26747 of 2015

WEB COPY

3. A report has been filed by the first respondent, the Official Liquidator stating that the second and the third respondents have preferred a claim before them. As per the report it is further submitted that as the second and third respondents have claims they may be directed to file their Form 66 before the Official Liquidator, the first respondent.

4. Heard both sides and perused the materials available on record.

5. Considering the submissions made by both the sides and on perusal on the records, it is clear that since VTX industries went into liquidation as per the order dated 23.06.2014 C.P.No.151 of 2013 and that the first respondent liquidator has taken control of VTX industries, the impugned notice dated 01.07.2015 demanding the petitioner to pay Rs.2,84,659/- is erroneous. Once the VTX industries has already been liquidated and an official liquidator has already been appointed, the second respondent should have sent the demand to the first respondent and not to the petitioner.



W.P.No.26747 of 2015

WEB COPY

6. Accordingly, this writ petition is allowed and the impugned notice addressed to the petitioner is quashed, and the petitioner herein is exonerated from all the liabilities under the ESI Act insofar as VTX Industries, Coimbatore, is concerned. The second respondent, is at liberty to settle the dues under the ESI Act in respect of VTX Industries only with the first respondent. Consequently, connected writ miscellaneous petition is closed. No costs.

**28.03.2024**

vca

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| Index    | : | Yes/No  |
| Citation | : | Yes/ No |
| Internet | : | Yes/No  |



W.P.No.26747 of 2015

WEB COPY

To,

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WEB COPY



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**DR. D.NAGARJUN,J.**

**vca**

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