



WEB COPY



W.P.No.5872,5876 & 5879 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.5872, 5876 and 5879 of 2024 and
W.M.P.Nos.6506 and 6509 of 2024

M/s.Sri Palani Murugan Enterprises Limited

Represented by its Director

Mr.Ramasamy Ashyanth

No.126, KG House, Arts College Road,

Coimbatore – 641018.

...Petitioner

in W.P.Nos.5872 & 5876 of 2024

Ramasamy Ashyanth

...Petitioner

in W.P.No.5879 of 2024

Vs.

1. The Deputy Director

Employees State Insurance Corporation

Sub Regional Office, Coimbatore

1897, Trichy Road, Panchdeep Bhavan,

Ramanathapuram, Coimbatore – 641045.

...Respondent

in W.P.Nos.5872 and 5876 of

2024

2. The Recovery Officer

Employees State Insurance Corporation

Sub Regional Office, Coimbatore

1/7



W.P.No.5872,5876 & 5879 of 2024.

1897, Trichy Road, Panchdeep Bhavan,
3. Ramanathapuram, Coimbatore – 641045.

The Branch Manager

HDFC Bank

No.9, 1st Floor, SR Centre,
Sriman Srinivasa Road, Alwarpet,
Chennai – 600 018.

...Respondent
in W.P.No.5879 of 2024

PRAYER in W.P.No.5872 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the order under Section 45A dated 10/11/2021 having reference No.56-56-063687-001-0101/II-185/ZDZO passed by the respondent and quash the same as arbitrary and illegal.

PRAYER in W.P.No.5876 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the order under Section 45A dated 19/04/2021 having reference No.56-00-063687-000-0101INS.II SRO passed by the respondent and quash the same as arbitrary and illegal.

PRAYER in W.P.No.5879 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to refund the amounts recovered from the petitioner.

For Petitioner : Mr.Anandh S

For Respondents : Mr.G.Bharadwaj,
Standing Counsel



WEB COPY



W.P.No.5872,5876 & 5879 of 2023.

COMMON ORDER

The petitioner has two doubling units in Coimbatore with ESI code Nos.56560636870010101 and 56560636870010101 respectively. According to the petitioner, those two units were closed as early as on 18.03.2017 and the closure report was filed with the Deputy Director of Industrial Safety & Health, Division II, Coimbatore on 18.03.2017. An adhoc Claim in Form C18-Adhoc dated 25/11/2020 proposing to recover ESI dues from March 2017 to October 2020 in respect of 20 employees was received by one of the petitioner's director. Thereafter on 01.11.2023, prohibitory order under 45A was passed confirming the proposal and C18-Adhoc, which the petitioner came to know only during November 2023. According to the petitioner, the 45A order was passed exparte and one M/s. Velevan Textiles obtained ESI registration with effect from 01.03.2017 at the very same premises. The petitioner has therefore filed writ petition challenging the 45A order.

2. It is submitted by the learned counsel for the petitioner that the petitioner had no knowledge of the exparte order passed under Section 45A till



W.P.No.5872,5876 & 5879 of 2023.

November 2023. Only in November 2023, when the petitioner's Bank Account was attached vide order dated 01.11.2023 that the petitioner came to know of the same. In pursuance to the attachment order dated 01.11.2023, a sum of Rs.21,50,000/- was recovered from the petitioner's Bank Account. The learned counsel further submits that the said 45-A Ex-parte order was passed without giving notice to the petitioner and the said sum of Rs.21,50,000/- was recovered from the Director's personal account. Hence, the petitioner has filed the above writ petitions challenging the 45A order as also for refund of the amount recovered from the Director's personal account.

3. The learned counsel for the respondent submits that the said writ petitions are not maintainable as the petitioner has alternative remedy of an appeal under the ESI Court. The learned counsel further submits that the petitioner should be relegated to the Appellate Tribunal under Section 75G of the ESI Act as the appeal time expires only in December 2024.

4. I have considered the submissions of both counsels.



W.P.No.5872,5876 & 5879 of 2024.

WEB COPY

5. The petitioner has not exhausted the alternate remedy available under Section 75-G of the ESI Act. It is seen that the appeal time expires only in December 2024. Hence, I am of the view that the writ petition does not merit consideration and the same is dismissed on this short ground. It is made clear that the respondent shall not insist on 50% deposit mandated under 75-2B of the ESI Act as a sum of Rs.21,50,000/- has already been recovered from the petitioner which is evidenced from the acknowledgment dated 26.12.2023 issued by the Recovery Officer. The writ petitions are accordingly disposed of in terms of the above. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

07.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
Shl



W.P.No.5872,5876 & 5879 of 2021.

To

1. The Deputy Director
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1897, Trichy Road, Panchdeep Bhavan,
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2. The Recovery Officer
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N.MALA,J.

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