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W.P.No.7810 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.7810 of 2024 and
W.M.P.Nos.8747 and 8750 of 2024

A.Habeebur Rahman Sons
'S' Beedi Factory,
M.r.A.Hafeezur Rahman
P.B.No.7, No.245, Santhapet,
Gudiyatham – 632602
Rep by its Partner

...Petitioner

Vs.

1. The Recovery Officer
Employees State Insurance Corporation
Chennai

2. Indian Bank, Corporate Office,
PB No.5555, 254-260, Avvai Shanmuam Salai,
Royapettah, Chennai – 600 014.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, quash the order bearing No.TN/RECY/45G/51002028680000999/CCR-119095 dated 13/03/2024 passed by the 1st Respondent and consequently forbear the 1st Respondent from initialing any recovery proceedings based on the order dated 10.08.2023 passed under Section 45A of the ESI Act till the disposal of the petition filed by the petitioner under Section 75 of the ESI Act pending before the Principal Labour Court, Vellore in E-filing No.ATN20220002911C202400003.



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For Petitioner : Mr.C. Manohar Gupta

For R1 : Mr.G.Bharadwaj
Standing Counsel

ORDER

The writ petition is filed challenging the order dated 13.03.2024 passed under Section 45G of the ESI Act and consequentially forbear the first respondent from initialing any recovery proceedings based on the order dated 10.08.2023 passed under Section 45A of the ESI Act till the disposal of the petition under 75 of the ESI Act till the disposal of the petition.

2.The petitioner establishment is engaged in Beedi manufacturing. The petitioner establishment is a registered firm allotted with ESI Code No.51-00-10846-21. On 10.08.2023, the respondent passed an order under Section 45A of the ESI Act, assessing contribution for the sum of Rs,62,54,325/- (Rupees Sixty two lakhs fifty four thousand three hundred and twenty five only) for the period 07/2018 to 12/2020.



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3. The petitioner filed an appeal under section 45AA of the ESI Act dated 26.10.2023 along with a Demand Draft for the sum of Rs.15,65,000/- being 25% of the amount assessed under 45A order. The said appeal was dismissed on the ground of limitation. Thereafter the respondent passed the attachment order under 45G of the ESI Act on 13.03.2024.

4. On 14.03.2024, the petitioner filed an appeal under section 75 of the ESI Act challenging the order passed under 45A dated 10.08.2023. While the said appeal was pending, the respondent passed the attachment order under Section 45G. The petitioner therefore filed the above writ petition inter alia, forbearing the first respondent from initiating any recovery proceedings based on the order dated 10.08.2023 passed under Section 45A of the ESI Act till the disposal of the appeal filed by the petitioner under Section 75 of the ESI Act.

5. The respondent has filed counter stating that the writ petition challenging the 45G order which is only a consequential order is not maintainable, more so, when the petitioner has already invoked the jurisdiction of the ESI Court, by filing appeal against 45-A order. It is further stated that ESI Court has the power to grant stay of the consequential proceedings



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including attachment proceeding under 45G of the Act. It is therefore stated that the writ petition by-passing the statutory provisions should not be entertained and the petitioner should be directed to exhaust the alternative remedy provided under the Act, which he has already invoked.

6.The learned counsel for the petitioner submits that the respondent even without waiting for appeal time to expire passed the impugned attachment order, thereby frustrating the petitioner's rights in the appeal. The learned counsel for the petitioner submits that the petitioner had deposited Rs.15,65,000/- towards 25% of the claim while filing 45AA appeal and the same is retained by the respondents. The learned counsel submits that as the 45AA appeal was dismissed, the petitioner filed the appeal under Section 75 of the ESI Act, challenging the 45A order dated 10.08.2023 along with the waiver and stay application and the same is pending before ESI Court. The learned counsel further submits that in pursuance of the impugned order the petitioner's Bankers attached as Rs.7.25 lakhs and totally a sum of Rs.22.90 lakhs, which is almost 35% of the demand, is retained by the respondent. The learned counsel therefore prays that pending statutory appeal as the respondent has already recovered Rs.22.90 lakhs the respondent should be directed to



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revoke the attachment order.

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7. The learned counsel for the respondent on the other hand submits that the petitioner having invoked the statutory remedy provided under ESI Act the writ petition should be dismissed as not maintainable. The learned counsel further submits that the petitioner having invoked the jurisdiction of the ESI Court should be relegated to the ESI Court for stay of 45G order and all consequential reliefs.

8. Heard both counsels and perused the materials placed on record.

9. It is seen that the petitioner earlier filed an appeal under Section 45AA of ESI Act challenging 45A order dated 10.08.2023 and deposited Rs.15,65,000/- being 25% of the demand for preferring the 45AA appeal. The said appeal was dismissed as time barred. Thereafter, the respondent passed the impugned attachment order under Section 45G on 13.03.2024. The petitioner on 14.03.2024 preferred an appeal under Section 75 of the ESI Act against 45A order dated 10.08.2023 along with waiver and stay application. The said appeal is pending. It is seen that after the 45G order a further sum of



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Rs.7.25 lakhs was attached by the petitioner's bankers. It is seen that totally a sum of Rs.22.90 lakhs is retained by the respondent against the demand of Rs.62.54 lakhs. The contention of the learned counsel for the petitioner that as the appeal is pending and almost 35% of the demand amount is retained by the respondent, the attachment order should be revoked without relegating the petitioner to the ESI Court, in my view is justified for the reason that the petitioner having approached the ESI Court by way of appeal, the petitioner should be given an opportunity to contest the appeal on merits and the respondent should also await the outcome of the appeal, before taking any coercive action. I am therefore of the view that to meet the ends of justice, the following directions can be issued and the writ petition disposed of accordingly.

10. Considering the facts of the case, the following directions are issued:

(i) The petitioner is directed to deposit 50% of the amount claimed under Section 45G order (ie) Rs.35,72,176/-. The petitioner has already deposited Rs.22,90,000/-, the balance amount of Rs.12,82,176/- (35,72,176 - 22,90,000) shall be paid within two weeks from the date of receipt of a copy of this order.

(ii) The respondent shall give credit to the aforesaid amount towards the



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50% mandatory pre deposit under sub-Section 2-B of Section 75 of the ESI Act.

(iii) On receipt of such amount, the respondent is directed to pass orders revoking the attachment order passed under Section 45G of the Act.

(iii) The ESI Court shall deal with the matter on merits and in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

25.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To
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N.MALA,J.

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