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W.P.No.11465 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM :

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

W.P.No.11465 of 2024

and

W.M.P.Nos.12575 and 12577 of 2024

M/s. Kaycees Health Soft India Pvt.Ltd.,
Represented by its authorized signature and Managing Director,
K.C.Anand,
No.05, 9th street, Sastri Nagar,
Adyar, Chennai – 600 020. ... Petitioner

Vs.

The Deputy Director,
Employees State Insurance Corporation,
“Panchdeep Bhavan” No:143, Sterling Road,
Nungambakkam, Chennai – 600 034. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for records in order dated 14.03.2024 in E.I.O.P.No.05 of 2018 passed by the learned Employees Insurance Court, (Principal Labour Court), Chennai.

For petitioner	:	Mr.Leelesh Sundaram for M/s.Nathan and Associates
For respondent	:	Mr.S.P.Srinivasan for ESI



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ORDER

This writ petition is filed to quash the order dated 14.03.2024 in E.I.O.P.No.05 of 2018 passed by the learned Employees Insurance Court, (Principal Labour Court), Chennai.

2. The petitioner's software company was registered with Registrar of Companies. When the petitioner was engaged in steadfast business, the respondent without any notice has visited the premises of the petitioner's office alleging that the petitioner's company has defaulted on the contributions, and served a show cause notice dated 11.05.2016 stating that the petitioner has failed to pay contributions and not submitted monthly details of the contributions from May 2015 till December 2015 and directed the petitioner to give explanation within a period of 30 days as to why assessment of Rs.1,11,540/- should not be levied. Further, another show cause notice dated 20.09.2016 was issued pointing out that the petitioner has failed to appear and directed to pay the assessment amount by 07.10.2016.



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3. The respondent has also sent an application cum letter dated 26.08.2016 to the Recovery Officer under Section 45 C to 45 I of the ESI Act, 1948 to recover a sum of Rs.3,20,678/- plus interest 12% per annum which amounts to Rs.83,902/- in toto Rs.4,04,580/-. Aggrieved by the same, this present writ petition is filed.

4. It is submitted by the learned counsel for the petitioner that without following the procedure, the authorities of the respondent have high handedly visited the premises of the petitioner and served the show cause notice. It is further submitted that opportunity was not given to the petitioner to submit explanations to the show cause notices issued by the respondent and that the petitioner company being a software company will not come under the purview of the ESI Act.

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

6. The impugned orders were passed under Section 45 C to 45 I of the ESI Act. Since the petitioner is aggrieved by the impugned orders he should have approached the appellate authority under the ESI



Act. Though, it is submitted by the petitioner that while passing the impugned orders the procedure that was followed by the respondents, still the petitioner should have exhausted the remedy of appeal under Section 82 of the ESI Act. It is a settled legal proposition that the writ petition will not lie if there is a Statutory efficacious remedy.

7. The Hon'ble Supreme Court of India in a case reported in **2022 livelaw (SC) 784**, it is observed that:

6.

“At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the assessee straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of Satyawati Tondon (supra) in which this Court had an occasion to



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consider the entertainability of a writ petition under Article 226 of the Constitution of India by by-passing the statutory remedies, is required to be referred to.

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7. Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, bypassing the statutory remedies.”

8. Accordingly, this writ petition is disposed of giving liberty to the petitioner to approach the ESI, subject to limitations, law and other procedures. Connected W.M.Ps are closed. No costs.

26.04.2024

vca

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

To,
The Deputy Director,
Employees State Insurance Corporation,
“Panchdeep Bhavan” No:143, Sterling Road,
Nungambakkam, Chennai – 600 034.



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Dr.D.NAGARJUN,J.

vca

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