IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.1622 of 2024
and CMP.No.11414 of 2024

M/s.Sri Gowtam Tex
Rep. By its Partner
R.Easwaramurthy
S/o.Rassappa Gounder
No.4B, Gopal Nagar, Near KVR Lay Out
Karuvampalayam, Mangalam Road
Tiruppur-641 604 ...Appellant/Petitioner

Vs

The Recovery Officer
Employees State Insurance Corporation
1897, Trichy Road
Coimbatore-641 045 .... Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 29714 of 2018 dated 15.04.2024.

For Appellant : Mr.B.Kumarasamy

For Respondent : Mrs.G.Narmadha
for Mr.G.Bharadwaj

JUDGMENT

J.NISHA BANU, J.

This Writ Appeal is filed by the appellant-writ petitioner as against the order passed in W.P.No.29714 of 2018 dated 15.04.2024, whereby, the learned Single Judge, dismissed the writ petition filed challenging the prohibitory order dated 06.09.2018.

2. The appellant is engaged in the business of garments and allied products and were covered under the Employees State Insurance Act, 1948.

3. The short facts necessary for the disposal of this writ appeal is as follows:-

(a) From the year 1995 to 2002, the Company failed to pay their contributions to the ESIC.

(b) On 02.05.2003, the ESIC sent notice calling them to pay Rs.20,54,823/- for the arrears from 1995 to March 2003.

(c) On 26.05.2003, C-18 notice was sent to the Company calling for personal hearing on 12.06.2003. The Manager of the company did not attend the enquiry as well as personal hearing.

(d) On 13.08.2003, the Authorising Officer sent the recovery notice (C-19).

(e) On 21.08.2003, ESIC sent demand notice claiming Rs.20,98,950/- without conducting Section 45-A enquiry.

(f) On 30.09.2003, the appellant-company filed an application to the ESIC explaining the reasons for not producing the records and had asked for rehearing the personal enquiry.

(g) Subsequently, the appellant-company paid Rs.4,48,611/- + Rs.1,19,702/- in total Rs.5,68,313/-.

(h) The appellant-company then filed a Writ Petition to quash the recovery notice (C-19). This court granted interim stay on a condition to pay Rs.5 lakhs within 8 weeks from 23.03.2004. Against that order, the Company preferred an appeal. The Division Bench reduced the amount from Rs.5 lakhs to Rs.3 lakhs payable within two weeks. Thereafter, an extension petition was filed to extend time to remit the amount of Rs.3,00,000/-. The Division Bench vide order dated 02.06.2004, extended the time to 31.07.2004.

(i) The appellant remitted a sum of Rs.50,000/- on 24.07.2004 and filed a petition for permission to pay the balance amount of Rs.2,50,000/- in installments.

(j) The Division Bench passed orders on 29.10.2004 granting installment facility and further directed the respondent – ESIC to hear the petition dated 30.09.2003.

(k) The appellant paid the entire balance amount of Rs.2,50,000/- in three installments before 21.10.2004.

(l) It is the stand of the appellant that on 12.07.2010, the appellant company was engulfed with fire and the entire building and goods were destroyed and thereafter, it did not carry any business activity.

(m) On 25.08.2010, ESIC recovered Rs.1,81,675/- from the appellant.

(n) On 06.09.2018, ESIC sent Prohibitory Order to pay contribution with interest of a sum of Rs.32,05,586.

(o) On 11.10.2018, the appellant filed Writ Petition to quash the Prohibitory order given by the ESIC.

4. The learned Single Judge, after elaborately discussing the facts and the earlier Division Bench orders on the matter, held that the Division Bench had merely extended the time and condoned the delay in payment but the writ petitioner raised a plea that the Division Bench directed the ESIC to rehear the petition dated 30.09.2003 and further permitted the petitioner-company to pay

in installments and these statements are clearly false and the writ petitioner should be non-suited on this short ground.

5. The learned Single Judge, further while dealing with the merits of the matter, held that the petitioner has challenged only prohibitory order dated 06.09.2018 which is consequential order and has not challenged the C-18 (Adhoc) notice dated 26.05.2003, therefore the writ petition is not maintainable.

6. The learned Single Judge further pointed out that no orders are necessary under Section 45-A when Form C-18 (Actuals) is issued. In the present case, Form C-18 (Actuals) was passed as early as on 26.05.2003 and it remains unchallenged till date. The learned Single Judge further found that petitioner even without challenging C-18 (Actual) notice, has successfully dragged on the proceedings from 2003 to 2010. Even the ESIC stated that summons were served on the writ petitioner on 10.07.2013 and 14.06.2017, but petitioner failed to appear and make the payments and thereafter the impugned prohibitory order was passed.

7. We have heard submissions of the learned counsel appearing for both sides and carefully perused the impugned order passed by the learned Single Judge.

8. The learned Single Judge has rightly taken into consideration the appellant's misleading statements and interpretations of the order passed by the previous Division Bench as to payment in installments and negatived the contention of the learned counsel for the writ petitioner.

9. Section 45A of the ESI Act, 1948, is very clear as to when Section 45A order has to be passed. In this case, the appellant company has provided with all the records and documents to the ESIC while inspection and only on that basis, C-18 (Actual) notice was issued by the ESIC. Hence, Section 45A order is not necessary to be passed. In this regard, it is relevant to look into the settled proposition of law held by the Supreme Court in the case of ***ESI Corporation Vs. C.C.Santhakumar 2007 (1) SCC 584*** which is as under:-

> " Section 45-A provides for determination of contributions in certain cases. When the records are not produced by the establishment before the Corporation and when there is no cooperation, the Corporation has got the

power to make assessment and determine the amount under Section 45-A and recover the said amount as arrears of land revenue under Section 45-B of the Act. This is in the nature of a best judgment assessment as is known in taxing statutes."

10. In the light of the above, we have no hesitation to dismiss the writ appeal. The appellant's act is nothing but to drag on the proceedings. Even though ample amount of time has been granted to the appellant to challenge the notice in the statutory forum, the appellant failed to challenge the same but now making an attempt to stall the entire recovery process. Therefore, finding no grounds to interfere in the order of the learned Single Judge, this Writ Appeal is dismissed. No costs. Consequently, connected MP is closed.

Internet:Yes/No **(J.N.B.J.)** **(P.D.B.J)**
nvsri 18.06.2024

J.NISHA BANU ,J.
and
P.DHANABAL,J.

nvsri

To

The Recovery Officer
Employees State Insurance Corporation
1897, Trichy Road
Coimbatore-641 045

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