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W.P.No.22318 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.22318 of 2024
and W.M.P.Nos.24301 & 24302 of 2024

McWane India Private Limited
Registered Office and Factory at:
483 Kamaraj Road,
Uppilipalayam Post,
Coimbatore – 641 015, India
Office and Factor at:
B-100, 300 – EMC, 3rd cross,
Sri City, Andhara Pradesh – 617 464, India.
Petitioner

...

/vs/

1. The Recovery Officer,
Sub-Regional Office,
(SRO Coimbatore)
Employee's State Insurance
Address at: Sub Regional Office (SRO)
Coimbatore, Tamil Nadu.
2. The Deputy Director,
Employees' State Insurance Corporation,
Address at: Sub Regional Office (SRO)
Coimbatore, Tamil Nadu.



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3. Authorized Officer,
Employees' State Insurance Corporation,
C/o. Sub Regional Office (SRO).

4. The Regional Director,
Employees' State Insurance Corporation,
Address at: ESI Corporation Regional Office
Panchdeep Bhawan,
143, Sterling Road, Nungambakkam,
Chennai – 600 034,
Tamil Nadu.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to quash the impugned recovery order dated 18.06.2024 bearing Cr.No.58652 in Form No.ESI CP 2 passed by the first respondent based on the issuance of the Recovery Certificate No.5600115538000/0000001 by the second respondent as being wholly without jurisdiction, non-speaking, ultravires and in contravention of the Employee State Insurance Corporation Act, 1948 and direct the second respondent to correct the records of ESIC that no ESI contribution is payable by the petitioner in view of compliance of the order dated 27.04.2022 passed by Appellate Authority under Section 45AA of the ESI Act, 1948.

For Petitioner ... Mr.Rahul Balaji

For Respondents ... Mrs.S.Jayakumari
Standing Counsel



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ORDER

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This writ petition has been filed challenging the impugned recovery order dated 18.06.2024 passed by the first respondent based on the issuance of the Recovery Certificate No.5600115538000/0000001 and consequently direct the second respondent to correct the records of ESIC that no ESI contribution is payable by the petitioner in view of compliance of the order dated 27.04.2022 passed by Appellate Authority under Section 45AA of the ESI Act, 1948.

2. On 07.08.2024, this Court has passed the following order:-

“Mrs.S.Jayakumari, learned Standing Counsel takes notice for the respondents.

2. The attention of this Court was drawn to the order of the Appellate Authority dated 27.04.2022, wherein, a relief has been granted by accepting the fact that the contribution pertaining to the period from January 2015 to August 2019 has already been paid by the petitioner. However, in the impugned order dated 18.06.2024, the above fact was overlooked and it is stated that the petitioner is due to pay contribution inclusive of the period between January 2015 to August 2019. As the petitioner has raised contentious points based on the records, I feel it is appropriate to grant interim stay.



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3. Hence, there shall be an order of interim stay until further orders.

4. List the matter on 28.08.2024.”

2. When the matter was taken up today, the learned counsel for the respondents submitted that whatever the amount paid by the petitioner so far would only represent the adhoc amount as referred in the order dated 28.01.2020 passed under Section 45-A by the second respondent. In the above order, it is stated as follows:-

“So the contribution payable is determined as Rs.5353990/- for the period from 01.01.2015 to 31.08.2019. The assessment of contribution made is fair, reasonable, legal and according to the law. However, since the adhoc claim is issued for an amount of Rs.2237591/-, 45-A order is restricted to C.18(adhoc) amount and for the balance amount a separate C.18(Actual) claim for Rs.3116399/- is being issued.”

3. However, the learned counsel for the petitioner submitted that the petitioner has paid the whole of the amount which has been ordered by the appellate authority in its order dated 27.04.2022 and the appeal filed under



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Section 45AA of the ESI Act, 1948. The operative portion of the above order would be as under:-

“6.In view of the above, after careful consideration of all the facts and verification of the records of the Social Security Officer of this office, it is hereby confirmed that a sum of Rs.8,16,763/- (Rupees eight lakhs sixteen thousand seven hundred and sixty three only) is statutorily due as contribution and payable by the employer for the period from 01/2015 to 08/2019. The amount of contribution determined works out which is fair, reasonable and according to law.

7.The employer has already deposited the 25% of ordered amount i.e., Rs.5,60,000/- the same may be adjusted with the determined contribution of Rs.8,16,763/- and thus the balance amount of contribution of Rs.2,56,763/- (Rupees Two lakhs fifty six thousand seven hundred and sixty three only) is finally payable by employer. The appeal of appellant is disposed off with the above mentioned directions. No further appeal or correspondence will be entertained in this regard.”

4. The grounds of appeal filed by the petitioner does not appear that the appeal is only in respect of the adhoc so ordered to be paid by the appropriate authority. In fact, in the order passed under Section 45-AA, it has been specifically stated that a sum of Rs.2,56,763/- is finally payable by



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the employer. In the absence of any specific mention in the appeal order and that it pertains only to the adhoc payment, it cannot be presumed that the appeal order has been passed only as an interim measure in respect of adhoc payment and not for the entire assessment.

5. If the impugned order creates doubts in the minds of the petitioner that the order has been passed only in respect of the adhoc payment ordered to be paid, the petitioner ought to have filed a clarification petition to clarify the same before the appellate authority and get an order to that effect. Hence, the petitioner is at liberty to file a clarification petition before the appellate authority and the appellate authority shall dispose the same within a period of four weeks from the date of receipt of such petition received from the petitioner.

6. With the above observations, this writ petition is disposed. No costs. Connected miscellaneous petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To:

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Employee's State Insurance
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R.N.MANJULA ,J.

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