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W.P.No.26551 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.26551 of 2024 and
W.M.P.Nos.29055 & 29056 of 2024

M/s.Blue Breeze Enterprises,
Rep. by one of its Partner,
Mr.Balaji,
S/o.Narayanakrishnan
No.1-726, I-Meenakshi Nagar,
Mudalaipalayam Village, Tiruppur District.

... Petitioner

Vs.

The Deputy Director,
Revenue Branch, ESI Corporation,
Sub-Regional Office,
Coimbatore District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent in his proceedings No.56-56-104701-002-0106/INS.III/SRO/2355/2019 dated 18.10.2019 and quash the same as illegal and consequently, direct the Principal Labour Court to take on file and number the Employment State Insurance Original Petition filed in ESI-OP ATN 202300000267962024000005 dated 19.08.2024 within a time stipulated by this Court.

For Petitioner : Mr.M.Dinesh



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ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent in his proceedings No.56-56-104701-002-0106/INS.III/SRO/2355/2019 dated 18.10.2019 and quash the same as illegal and consequently, direct the Principal Labour Court to take on file and number the Employment State Insurance Original Petition filed in ESI-OP ATN 202300000267962024000005 dated 19.08.2024 within a time stipulated by this Court.

2. Heard Mr.M.Dinesh, learned counsel for the petitioner and perused the materials available on record.

3. The learned counsel for the petitioner submitted that the impugned order dated 18.10.2019 has been passed without following the principles of natural justice and without taking into consideration of the submission made before the appropriate authority that the partnership has been dissolved and the petitioner is in no way responsible for any ESI



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dues in his personal capacity.

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4. The fact remains that the determination has been made under Section 45-A of the Employees' State Insurance Act as on 18.10.2019. Even now, the petitioner has filed this Writ Petition in the name of the partnership firm by stating himself as one of the partner. In fact the impugned order itself would clearly indicate that if the party is not satisfied with the order, he can prefer an appeal to the appellate authority as provided under Regulation 31-D within 60 days from the date of the said order after depositing twenty five percent of the contribution so ordered or the contribution as per his own calculation whichever is higher with the Corporation. Admittedly, the petitioner did not choose to prefer any appeal.

5. The learned counsel for the petitioner tried to convince this Court that the copy of the order has not been served upon the petitioner and it has been served on one of the erstwhile partner who had already relinquished his partnership.



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6. The fact remains that the copy of the order has been served to the partnership firm as well. Now the petitioner has filed this Writ Petition stating that he has come to his Court by invoking Section 82 of the ESI Act. Even Section 82 contemplated the period of 60 days limitation. Hence, the petitioner cannot file a Writ Petition after 60 days but at his sweet will, after a few years.

7. However, the learned counsel for the petitioner submitted that as per Section 82(4), he can maintain the petition to condone the delay. But the Principal Labour Court, Coimbatore, where the petitioner has filed an appeal, did not prefer to take the appeal on file.

8. Section 82 of the Act will come into play only when the party is not satisfied with the appeal order passed under Section 45(a) of the Act. Admittedly, the impugned order has been passed by the appropriate authority and not the appellate authority in order to get the benefit of condonation under Section 82 of the Act. The petitioner who had missed the bus who was not vigilant and has not pursued the matter before the



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right forum at the relevant point of time, appears to have made this attempt only to check whether he can stop the recovery proceedings. The relief which the petitioner cannot get directly, cannot be obtained indirectly. However, the petitioner is at liberty to make all his contentions during the recovery proceedings and leave it to the consideration of the appropriate authority.

9. With the above observations, this Writ Petition is disposed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

12.09.2024

To

The Deputy Director,
Revenue Branch, ESI Corporation,
Sub-Regional Office,
Coimbatore District.



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R.N.MANJULA, J.

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