IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.12752 of 2022
and
W.M.P.Nos.12210, 12214 and 12216 of 2023
and
W.M.P.No.30793 of 2023

M/s.S.K.Abdul Aleem Saheb Sons
Aleem Beedi Works,
Rep.by its Managing Partner Mr.S.A.Zubeirullah
No.107/B&C, C.N.A.Road, Khaderpet,
Vaniyambadi, Tirupattur District - 635 751. ...Petitioner

...Versus...

1.The Government of Tamil Nadu,
Rep.by its Principal Secretary,
Labour Welfare and Skill Development (L1) Department,
Fort St.George, Chennai - 600 009.

2. Employees State Insurance Corporation,
Rep.by its Assistant Director,
Regional Office (Tamil Nadu)
ESI Corporation, Panchdeep Bhawan,
143, Sterling Road, Chennai - 600 034.

3. Recovery Officer,
Employees State Insurance Corporation,
ESI Corporation, Panchdeep Bhawan
143, Sterling Road,
Chennai - 600 034. ...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in G.O.(D) No.101, dated 09.03.2022 and signed on 14.03.2022 by the Labour Welfare and Skill Development (L1) Department, and to quash the same as illegal, arbitrary, and without the authority of law; and consequently, to direct the 1st respondent to renew the exemption granted to the petitioner from the provisions of the ESI Act, 1948, for the periods from 01.01.2019 to 31.12.2019, 01.01.2020 to 31.12.2020, and 01.01.2021 to 31.12.2021. .

For Petitioner	::	Mr.K.M.Aasim Shehzad
For R1	::	Mr.E.P.Sennaiyangiri, Government Advocate
For R2 & R3	::	Mr.K.Prabakar,

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<u>O R D E R</u>

This Writ Petition has been filed to call for the records of the first respondent in G.O.(D) No.101, dated 09.03.2022 and signed on 14.03.2022 by the Labour Welfare and Skill Development (L1) Department, and to quash the same as illegal, arbitrary, and without authority of law; and consequently, to direct the first respondent to grant the petitioner renewal of the exemption from the provisions of the ESI Act, 1948, for the periods from 01.01.2019 to 31.12.2019, 01.01.2020 to 31.12.2020, and 01.01.2021 to 31.12.2021.

2. The learned counsel for the petitioner would submit that the petitioner had sought exemption before the appellate authority for the periods from 01.01.2019 to 31.12.2019, 01.01.2020 to 31.12.2020, and 01.01.2021 to 31.12.2021. However, the authority, without properly considering the petitioner's requests and reports, passed separate orders mechanically, without application of mind, by order dated 09.03.2022. The State Government declined the request for exemption on the ground that it pertained to a retrospective period. The petitioner had submitted separate representations for each year. However, without considering those representations in a timely and proper manner, the authority passed a consolidated order only on 09.03.2022, despite the representations having been submitted much earlier.

3. The learned counsel further submitted that the respondents have failed to take into account that the application for renewal had been submitted periodically and was allowed by the appropriate authority from time to time until 2017. The first respondent failed to consider the relevant materials while passing the impugned order and has misused his discretionary power by rejecting the petitioner's renewal application without any valid basis. The first respondent ought to have taken into account the exemption sought for the period falling during the **'COVID-19'** pandemic. Furthermore, the first respondent cannot deny the exemption on the ground of delay in filing, as the period of limitation stood extended by virtue of the Hon'ble Supreme Court's order dated 23.09.2021 in Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020, by which the period from 15.03.2020 till 02.10.2021 was excluded from the computation of the limitation period for any suit, appeal, application, or proceeding.

4. The learned counsel for the respondents submitted that the petitioner had applied to the first respondent seeking exemption from payment of ESI contribution for the periods from 01.01.2019 to 31.12.2019, 01.01.2020 to 31.12.2020, and 01.01.2021 to 31.12.2021, through representations dated 07.10.2019, 05.10.2020, and 04.10.2021, respectively, which were sent by post and not within the prescribed time. As such, all the applications pertained to retrospective periods. Consequently, the authority passed the impugned order *under Section 91-A of the ESI Act.* The authorities have acted in accordance with law in passing the said order.

5. Even according to the petitioner, the relief sought in this writ petition pertains to the renewal of the exemption. As per the applicable provisions, the petitioner ought to have submitted the application for renewal at least three months prior to the expiry of the previous exemption. However, the exemption period had already lapsed in the year 2016. Therefore, even for seeking renewal, the petitioner failed to submit the application within the stipulated time. Hence, the present writ petition is liable to be dismissed.

6. Heard the learned counsel on either side and perused the materials placed on record .

7. It is an admitted fact that the petitioner filed exemption petitions for the period from 01.01.2019 to 31.12.2019, for the period from 01.01.2020 to 31.12.2020, and for the period from 01.01.2021 to 31.12.2021.

8. As per the provision *under Section 87 of the ESI Act*, an application for renewal shall be made three months before the expiry of the exemption period, and the appropriate Government shall take a decision on the same within two months from the date of receipt of such application. In the present case, no such renewal application was filed within the time prescribed under Section 87 of the ESI Act.

9. *As per Section 91-A of the ESI Act*, any notification granting exemption under Section 87, Section 88, Section 90, or Section 91 may be issued so as to take effect **prospectively**, on such date as may be specified therein. But, the period covered in the present case pertains to a retrospective period.

10. At this juncture, the learned counsel for the petitioner submitted that, with regard to the periods for the years 2019 and 2020, the exemption sought was for a retrospective period. However, for the year 2021, the representation was made in the month of October 2021, which falls within the prospective period. Therefore, the petitioner is entitled to exemption at least for the prospective period pertaining to the year 2021.

11. It is further submitted that the authority has passed the impugned orders without proper application of mind. The authority erroneously treated the entire period as retrospective, contrary to the facts and provisions of the Act. As per Section 87 of the ESI Act, the appropriate Government is required to take a decision on the application within two months of its receipt. In the present case, although the application for the year 2021 was submitted within the stipulated time, the order was passed without due consideration, and the entire exemption period was treated as retrospective.

12. In the present case, the authority passed the order on 09.03.2022. However, as per the mandate under the provisions of the ESI Act, the order ought to have been passed within two months from the date of receipt of the application.

13. Even according to the first respondent, the application was received on 12.11.2021, and the order was not passed within two months thereafter. However, the exemption sought was for the period from 01.01.2021 to 31.12.2021 and the applications was filing in the month of October 2021. Therefore, even based on the petitioner’s own application, the prospective period covered was only for a few months. As such, the petitioner’s contention that they are entitled to exemption merely for the remaining two-month period cannot be accepted. Hence, the authority has passed the order in accordance with law, and it does not warrant interference.

14. However, the learned counsel for the petitioner submits that the authority has passed the orders in a biased manner. It is further submitted that the petitioner received demand notices dated 02.02.2022, whereas the impugned Government Order was issued subsequently. Therefore, it is contended that the order is vitiated and liable to be set aside.

15. In reply, the learned counsel for the second respondent submitted that, since no exemption was granted, demand notices were issued. The impugned order was passed by the first respondent and not by the second respondent. Further, the demand notices have not been specifically challenged in the present writ petition. Therefore, in the absence of any specific challenge to the demand notices, this Court cannot pass any orders in respect of the same.

16. As rightly pointed out by the learned counsel for the second respondent, the demand notice dated 02.02.2022 was issued by the second respondent, whereas the impugned order was passed by the first respondent. Therefore, it is for the petitioner to challenge the demand notice, if so advised, in the manner known to law. In the absence of such a challenge, no relief can be granted in respect of the demand notice.

17. In view of the above discussion, this Court is of the opinion that the writ petition is devoid of merits and deserves to be dismissed.

18. Accordingly, this **Writ Petition is dismissed**. No costs. Consequently, the connected W.M.Ps. are closed.

14.07.2025

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Index:Yes/No
Internet:Yes/No
Speaking Order:Yes/No
To:

1.The Principal Secretary,
Labour Welfare and Skill Development (L1) Department,
Fort St.George, Chennai - 600 009.

2. Employees State Insurance Corporation,
Rep.by its Assistant Director,
Regional Office (Tamil Nadu)
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Employees State Insurance Corporation,
ESI Corporation, Panchdeep Bhawan
143, Sterling Road,Chennai - 600 034

P.DHANABAL,J.,

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W.P.No.27207 of 2022 and
W.M.P.Nos.26407 and 26408 of 2022 and
W.M.P.No.4785 of 2024

14.07.2025