



WEB COPY

WP Nos. 14329 & 14331 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-04-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

WP Nos. 14329 & 14331 of 2025

AND

WMP Nos. 16126, 16123, 16122 of 2025

W.P.No.14329 of 2025

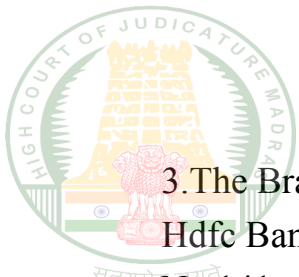
1. Sivasakthi Amman Spinning Mills
(p) Ltd.,
729/1, Vadamugham-Vellode Village,
Kuttupalayam, Perundurai-638 112,
Rep. By Its Director

Petitioner(s)

Vs

1. The Deputy Director
Employees State Insurance
Corporation, 1897, Trichy Road,
Panchdeep Bhavan, Ramanathapuram,
Coimbatore-641 045

2.The Recovery Officer
Employees State Insurance
Corporation, 1897, Trichy Road,
Panchdeep Bhavan, Ramanathapuram,
Coimbatore-641 045



3. The Branch Manager,
Hdfc Bank Erode Main Branch,
No.141, Kandakottam Complex, Sathy
Road, Erode -638 003.

Respondent(s)

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in proceedings No.56-00-044376-000-0101/ INS.III/ SRO/ 1805/ 2018 and No.56-00-044376-000-0101/ INS.III/ SRO/ 1806/ 2018, quash the orders dated 24.07.2018 and 25.07.2018 issued under Section 45A of the Employees State Insurance Act, 1948 and further direct the first respondent to conduct fresh enquiry in terms of Sec 45 of the Employees State Insurance Act, 1948 by providing adequate opportunity to the petitioner.

In Both W.P's

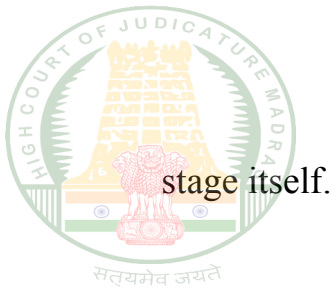
For Petitioner(s): Mr. Anand Gopalan For
M/s.Agam Legal Advocates

For Respondent(s): Mr.R. Rajaramani for R1 and R2

COMMON ORDER

Since the issue involved in the present writ petitions are one and the same they are disposed of by way of this common order.

2. Mr.R.Rajaramani, learned counsel takes notice on behalf of the 1st and 2nd respondents. In view of the consent expressed by the learned counsel on either side, these Writ petitions are taken up for final disposal at the admission



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3. Since no adverse order is being passed against the 3rd respondent, notice to the 3rd respondent is dispensed with.

4. The case of the petitioner is that the petitioner is a private limited company incorporated in the year 1994. The company faced financial issues during 2016 to 2017 resulting in halted operations and subsequently, the COVID-19 pandemic disrupted the production again. On 18.01.2024, the petitioner received a notice of recovery for a sum of Rs.58,89,527/- based on ex-parte orders dated 24.07.2018 and 25.07.2018 under Section 45A of the Employees State Insurance Act, 1948 (in short 'ESI Act') claiming contributions for the period from 01.08.2014 to 31.12.2016 and 01.01.2017 to 31.03.2018. Challenging the said ex-parte orders, the present writ petitions have been filed.

5. Learned counsel for the petitioner submitted that the 1st respondent ought to have sent proper notice and granted adequate opportunity to the



petitioner and the 1st respondent had gravely erred in by-passing the principles of natural justice. Hence, the order passed by the 1st respondent is wholly

misconceived. Learned counsel for the petitioner, upon instructions submitted that, the petitioner is ready to pay 25% of the demand amount before the 1st respondent and this Court may set aside the impugned orders dated 24.07.2018 and 25.07.2018 and remand the matter to the 1st respondent for fresh consideration.

6. Learned counsel appearing on behalf of the 1st and 2nd respondents submitted that, since the employer has failed to pay the ESI contribution, the office of the respondents had issued a show cause notices and the same was delivered to the principal employer and the same is evident from the Postal acknowledgement and the notice sent to the unit was also not returned undelivered and thereby, it is deemed to have been delivered and despite receiving the same, it is the employer who failed to send appropriate explanation and failed to appear in person at the time of personal hearings to substantiate its case and thereby, the impugned orders cannot be said to have



been passed in violation of principles of natural justice. Further, there is an effective appeal remedy available before the Appellate Tribunal, however, without resorting to such remedy, filing the present petition seeking the aforesaid relief is wholly unsustainable. Accordingly, he prayed for dismissal of this Writ petition.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, an order u/s. 45A of the Employees State Insurance Act has been passed as against the petitioner directing the petitioner to pay the PF contribution, of Rs.13,06,305/- and Rs.18,03,945/- alleging that, the petitioner had defaulted in payment of contribution, assailing which the present writ petitions have been filed. Though the facts stand as such, in view of the stand taken by the learned counsel for the petitioner that the petitioner is ready to deposit 25% each of the contribution as per 45A orders and that, the impugned orders came to be passed by the 1st respondent without hearing the petitioner,



this Court is inclined to set aside the orders impugned in this Writ petition and

accordingly, the impugned orders dated 24.07.2018 and 25.07.2018 passed by

the 1st respondent are set aside and the matter is remanded to the 1st respondent,

on condition that, the petitioner shall deposit 25% of the contribution to be

payable by the petitioner in respective impugned orders before the 1st

respondent within a period of two (2) weeks from the date of receipt of a copy

of this order. Upon such payment being made, the 1st respondent shall take up

the case on file for fresh consideration and shall conduct enquiry by affording

opportunity of hearing to the petitioner and aggrieved persons, if any and pass

appropriate orders within a period of eight (8) weeks thereafter.

9. With the above observations and directions, this Writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

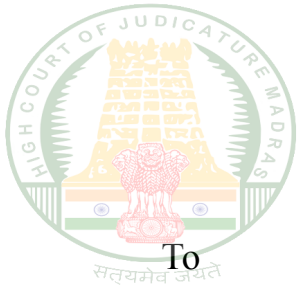
23-04-2025

RAP

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



To

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M.DHANDAPANI J.

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