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W.P.Nos. 38352, 38354 & 38355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos. 38352, 38354 & 38355 of 2024

and

W.M.P.Nos.41540, 41541, 41542 & 41544 of 2024

M/s.R.R.Colours,
Represented by its Proprietor,
Mr.P.Ravichandran,
258/1, Karaipudur Village,
Opposite to Park College,
Chonnakarai,
Tiruppur - 641 605.

... Petitioner
[in all W.P's]

Vs

1. Employees' State Insurance Corporation,
Sub Regional Office,
Panchdeep Complex,
1897, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045.

2. The Branch Manager,
ICICI Bank,
No.55, Chettipalayam Road,
Palladam - 641 664,
Tiruppur District.

... Respondents
[in all W.P's]



W.P.Nos. 38352, 38354 & 38355 of 2024

Prayer in W.P.No.38352 of 2024: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 29.11.2019 bearing reference No.56-00-108602- 000-0199/ INS.IV/ SRO/ of the first respondent demanding a sum of Rs.4,06,198/- for the period 0.1.11.2014 to 31.07.2019 and quash the same and further direct the first respondent to pass a fresh order after providing an opportunity of personal hearing to the petitioner to make their submission with necessary documents.

Prayer in W.P.No.38354 of 2024: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records of the impugned order dated 06.07.2022 bearing reference No.56-00-108602-000-0199INS.II SRO of the first respondent demanding a sum of Rs.1,42,296/- for the period 01.08.2019 to 30.11.2021 and quash the same.

Prayer in W.P.No.38355 of 2024: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records of the impugned prohibitory order dated 24.10.2024 bearing Ref. No.CBE/ RECY/ CP-4/ 56/ 108602/ 0199 of the first respondent and quash the same.

For Petitioner : Mr.R.Anishkumar
[in all W.P's]

For R1 : Ms.Jayakumari
for ESI
[in all W.P's]



W.P.Nos. 38352, 38354 & 38355 of 2024

COMMON ORDER

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These three writ petitions are filed by the same management and as such are taken up for disposal by way of this common order.

2. In W.P.No.38352 of 2024, the order passed under Section 45-A of the ESI Act, 1948 dated 29.11.2019, for the period from 01.11.2014 to 31.07.2019 is under challenge. Similarly, in W.P.No.38354 of 2024, the order passed under Section 45-A of the ESI Act, 1948, dated 06.07.2022 for the period from 01.08.2019 to 30.11.2021 is under challenge. In W.P.No.38355 of 2024, the consequential proceedings which are taken under Section 45-G and 45-H of the ESI Act, 1948, dated 24.10.2024, are challenged.

3. As far as the W.P.No.38355 of 2024 is concerned, once the determination of the contribution under Section 45-A has become final, it goes without saying that the authorities would issue a certificate for recovery as per Section 45-G and 45-H of the ESI Act. Therefore, the challenge to the consequential order cannot be countenanced.



W.P.Nos. 38352, 38354 & 38355 of 2024

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4. The primary contention of the writ petitioner is that the writ petitioner's concern was closed in the year 2017 and was not functioning thereafter and therefore, after a period of 2017, the very assessment of contribution is incorrect. While this may be so, the said contention have to be made during the assessment proceedings under Section 45-A. Even if the authorities have not considered the said contention and have wrongly assessed, the petitioner has got two remedies. The petitioner can either file an appeal under Section 45-AA within a period of 60 days or the petitioner can approach the ESI Court under Section 75 of the Act within a period of 3 years. Without doing so, the writ petition before the Court cannot be entertained.

5. The learned counsel appearing on behalf of the petitioner would rely upon the judgement of the Honourable Supreme Court of India in ***Radha Krishnan Industries v. State of Himachal Pradesh and others reported in [(2021) 6 SCC 771]***. The learned counsel for the petitioner would rely upon paragraph No. 27.3, where the Court has delineated the exceptions to the rule



W.P.Nos. 38352, 38354 & 38355 of 2024

of alternative remedy arise where the same is for the enforcement of a fundamental rights, violations of principles of natural justice or the principles are wholly without jurisdiction. The learned counsel for the petitioner would further submit that in this case, the assessment is wholly without jurisdiction.

6. I am unable to accept the said contention because whether the petitioner's industry is closed or not is a question of fact and is not a question of jurisdiction. On the other hand, the Honourable Supreme Court of India in ***CCT v. Glaxo Smith Kline Consumer Health Care Limited reported in (2020) 19 SCC 681***, has categorically held that when statutory orders are passed, which is a subject matter of appeal and other remedies under the statutory regime, the High Court under Article 226 of the Constitution of India can neither extend the limitation nor entertain the writ petition, merely because the limitation period has expired or without making the party to avail such statutory remedies. Therefore, these writ petitions are disposed of on the following terms:-

(i) W.P.Nos.38354 of 2024 and 38352 of 2024 are dismissed with liberty to the petitioner to approach the ESI Court under Section 75 of the Act by duly claiming the



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W.P.Nos. 38352, 38354 & 38355 of 2024

benefit of exclusion of the COVID period as per law.

(ii) W.P.No. 38355 of 2024 stands dismissed. It would be open to the petitioner to seek interim orders only in the remedies which are to be obtained before the ESI Court and the further proceedings will be subject to such interim orders that the petitioner can obtain before the ESI Court. The dismissal of the present writ petition will not disentitle the petitioner management from claiming such appropriate remedies, both interim and final as against the consequential orders before the appropriate forum.

(iii) The petitioner will be entitled to approach the appropriate Court by producing the website-uploaded copy of this order without waiting for the certified copy of the order.

(iv) Consequently, connected miscellaneous petitions are closed. No costs.

02.01.2025

Neutral Citation: Yes/No
nsl



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D.BHARATHA CHAKRAVARTHY, J.

nsI

To

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2. The Branch Manager,
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W.P.Nos. 38352, 38354 & 38355 of 2024

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7/7