

(2019) 07 DEL CK 0507

In the Delhi High Court

Case No : Civil Writ Petition No. 13686 Of 2018, Civil Miscellaneous No. 53357, 53358 Of 2018, 17151 Of 2019

M/S Bombay Intelligence Security India Ltd

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 45AA

Citation : (2019) 262 DLT 355

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Pankaj Kumar, Kanika, Soumya Pal, Bhagvan Swarup Shukla, Sarvan Kumar Shukla, Mukesh Kumar Shukla, Kavinder K Gill

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying as under:-

"a. Issue a writ of mandamus or any other writ or direction thereby directing all the respondents to consider and adjust the amount already deposited by the petitioner under their sub-code bearing no.20310218450011001 under the new sub-code i.e. bearing no. 10310218450011001 w.e.f. 01.10.2011 to 31.05.2013.

b. Issue a writ of mandamus or any other writ or direction thereby directing all the respondents to refund the amount of Rs.85,25,484/- alongwith interest to the petitioner.

c. Issue a writ of certiorari or any other writ thereby quash the entire proceedings as well as order passed by all the concerned official/authority of the respondents whereby they had initiated the proceedings to recover the contribution amount alongwith its penalty/interest etc against the petitioner for their sub-code bearing no. 10310218450011001 for the period w.e.f. 01.10.2011

to 31.05.2013."

2. The controversy in the present petition relates to the recovery of Rs. 85,25,484/-, effected by respondent nos. 2 to 6 (hereafter 'ESIC') by recovering the said amount from the bank account of the petitioner. ESIC states that the said amount was recovered pursuant to an order dated 23.12.2016 passed under Section 45A of the Employees State Insurance Act, 1948 (hereafter 'the ESI Act'). In terms of the said order, a sum of Rs. 49,71,038/- was adjudicated as payable by the petitioner on account of contribution in respect of its Branch Office at Mayur Vihar for the period 01.01.2011 to 31.05.2013.

3. It is the petitioner's case that no amount was payable for the said period as the petitioner had already deposited the necessary contribution under the extant sub-code. The petitioner states that this was done because new sub-code was provided to the petitioner in June, 2013. It is contended on behalf of the petitioner that the contribution so made has been completely ignored and if the petitioner is given due credit for the amounts deposited under the then extant sub-code, no amount would be payable for the period in question.

4. The order dated 23.12.2016 passed under Section 45A of the ESI Act was preceded by a show cause notice dated 23.09.2016, whereby the petitioner was called upon to show cause as to why an order for recovery of an amount of Rs. 55,23,375/- not be passed for the period October, 2011 to May, 2013. ESIC states that the petitioner had not furnished any response to the said show-cause notice and consequently, the order dated 23.12.2016 was passed. It is stated that even thereafter, the petitioner did not take any steps to file an appeal against the said order despite provision of a statutory appeal under Section 45AA of the ESI Act.

5. Thereafter, ESIC had issued several notices for adjudication of the amounts from the petitioner. However, the petitioner had failed to do so. Resultantly, proceedings were initiated to enforce the said recovery by directly recovering the amount from the petitioner's bank account. It is stated that by then, the amount as adjudicated had increased substantially (to a sum of Rs. 85,25,484/-) on account of further interest and penalty.

6. The petitioner claims that it had responded to the show cause notice dated 23.09.2016 by its letter dated 21.10.2016 and had pointed out the payments already made. Clearly, the said response has not been taken into account. There is some controversy as to whether the said response was received by the respondents. However, this Court does not consider it necessary to examine that controversy. This is so, because it is admitted by the ESIC, in the counter affidavit filed on their behalf, that the petitioner had deposited a sum of Rs. 26,25,836/- under ESI Code No. 20310218450011001 for the period 01.10.2011 to 31.05.2013. It also appears that credit of the said amount has not been provided to the petitioner. Thus, even if it is assumed that the petitioner had not responded to the show-cause notice dated 23.09.2016, ESIC ought to have given

the petitioner the credit for the amount deposited by it.

7. In view of the above, this Court considers it apposite to set aside the order dated 23.12.2016 and remand the matter for consideration afresh. It is, accordingly, so directed.

8. Since the recovery has been made on the basis of the aforesaid order passed under Section 45A of the ESI Act, this Court also directs that the amount recovered from the petitioner be refunded to the petitioner within a period of four weeks from today. However, in order to protect the interest of the respondents, it is further directed that the said amount would be refunded against furnishing an unconditional bank guarantee which would be valid for a period of six months.

9. The concerned authority shall adjudicate whether any amount is due from the petitioner for the period in question, namely, October, 2011 to May, 2013. Needless to state that the petitioner would be given due credit for any amount deposited by the petitioner for the said period even though it may have been deposited in another sub-code.

10. In the event, the respondents find any amount is due from the petitioner, the said amount would be construed as having been adjudicated as on 23.12.2016 and the petitioner would also be liable to pay all interest on the said amount from 23.12.2016 till the date of passing of the order. The said amount would be recovered by invoking the bank guarantee furnished by the petitioner.

11. It is further clarified that in the event, the petitioner is aggrieved in the order so passed under Section 45A of the ESI Act, the petitioner would be at liberty to avail of the appellate remedy under Section 45A of the ESI Act.

12. The petition is disposed of with the aforesaid directions. All pending applications are also disposed of.