EXPARATE ORDERS ON I.A.I And II

IA No.I filed by the Applicant under Sec.78 of ESI Act to stay the operation of the Order passed u/s 45-A of ESI Act dated 31.10.2022 for Rs.5,80,041/- till disposal of the main Petition.

IA No.II filed by the Applicant under Section 75(2-B) of ESI Act to waive off the amount to be deposited under Section 75 (2-B) of ESI Act till disposal of the main Petition.

The Applicant has stated that applicant was doing labour contract service and supplying man power to M/s Gramox paper and Boards Limited, Nanjangud and obtained ESI code and was paying contributions regularly. It is further contended that the said Gramox paper and boards Limited cancelled the contract w.e.f. 11/2020 due to Covid-19 pandemic, hence the applicant closed the establishment w.e.f. 11/2020 and returned to his native place Odisha state. The applicant has paid contributions upto 10/2020 and because of closing of establishment he has not paid the contributions from 11/2020 and he is not bound to pay the contributions from 11/2020 and he has informed the said fact to the respondent by submitting a letter dated 08.08.2022. The respondent has issued notice to his address and in response to the notice the the applicant has attended for personal hearing and submitted that due to Covid-19 pandemic, he went to his native place and could not inform immediately because of complete lock down and produced the documents before the respondent authority. Not satisfied with the said documents, the respondent passed an order u/s 45-A of ESI Act, determined the contributions of Rs.5,80,041/- for the period from 01.11.2020 to 23.03.2022 for 75 employees on assumed wages and on adhoc basis. The order of the respondent is perverse and not based on the facts of the case. The respondent has not considered the documents produced by the applicant and passed an erroneous order. If the Order passed by the Respondent is not stayed, the Applicant will suffer great hardship and loss and also prayed the amount to be deposited may be waived. Hence, prayed that IA No.I and II may be allowed.

Heard.

Perused the Records. The Applicant has filed the above case to set aside the Order passed by the Respondent under Section 75 of ESI Act. As interim relief, the Applicant has sought for stay of impugned Order passed by the Respondent and to waive the amount to be deposited under Section 75(2-B) of the ESI Act. The applicant has contended that due to cancellation of contract, the applicant establishment was closed w.e.f. 11/2020 and the applicant had informed the said fact during personal hearing and produced the documents to that effect. The order passed by the respondent is perverse and the respondent has not considered the documents produced by the applicant establishment. At this stage, If Order passed by the Respondent is not stayed, the purpose of filing the above case will be defeated. No hardship will be caused to the Respondent if the Order passed by the Respondent is stayed. Hence, it is just and necessary to grant relief to the Applicant as follows;

ORDER

I.A.No.II filed u/s 75 (2-B) is partly allowed.

IA No.I filed by the Applicant under Sec.78 of ESI Act to stay the operation of the Order passed u/s 45-A of ESI Act dated 31.10.2022 for Rs.5,80,041/- is stayed until further orders subject to condition;

The Applicant has to deposit Rs.75,000/- in respect of demand made for Rs.5,80,041/- within 15 days from the date of this order with the Respondent Corporation.

Issue Notice on Application, IA No.I & II and copy of stay order to the Respondent through RAPD if Applicant deposits the amount as per the Order.

Call on 28.02.2023.

sd/-

JUDGE,
ESI Court, Mysuru.