EXPARTE ORDER ON I.A.I & 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 09.02.2022 clamming Rs.8,98,128/- till disposal of the above case.

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.

Applicant establishment is an educational institution and it is a registered under the Trust Act. The applicant establishment has engaged 65 employees for the year 2020-21, which includes teaching and non-teaching staffs. Out of them, 16 employees are exempted under ESI Act and only 49 employees comes under coverage of ESI Act. Due to Covid-19 pandemic during the year from 4/2020 to 9.2021 the applicant institute was completely closed as it is residential school and only few employees were working. The applicant institute has paid total wages to its employees of Rs.63,57,851/- during the year 4/2020 to 9/2021 and the applicant is liable to pay the contributions only @4% on the above said amount of Rs.2,54,315/-. The respondent has issued Show cause notice dated 26/10/2021 to the applicant to pay the contributions for the period from 01/04/2020 to 30.09.2021 and directed the applicant to appear for the personal hearing. The applicant has appeared before the respondent on 07.12.2021 and produced some documents. The respondent without considering the above said documents has passed an order u/s 45A of ESI, 1948 dated 09.02.2022 directing the applicant to pay Rs.8,98,128/- for the period from 1/04/2020 to 30/09/2021 at 4% of the average wages of Rs.11,550/- for 108 employees as per Annexure-A. The respondent without verification of relevant facts and records, has passed an order against the applicant institution under ESI Act. The order of the respondent is perverse and not based on the facts of the case. The respondent has not given reasonable opportunity to establish that the applicant is not liable to pay the ESI contribution. If the Order passed by the respondents are not stayed and amount to be deposited not waived off, the Applicant will suffer great hardship and loss. Hence, prayed that IA No.I & 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 the ESI Act. As interim relief, the Applicant has sought for stay of impugned Order passed by the Respondent and to waive off the amount to be deposited under Section 75(2-B) of the ESI Act. Applicant has contended that the applicant is not liable to pay the contribution of Rs.8,98,128/-. The order passed by the respondent is perverse and the respondent has not given opportunity to defend its case. Whether applicant is liable to pay the demanded amount or not can be determined only after trial. 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. Taking into consideration above said facts, it is just and necessary to grant relief to the Applicant as follows;

ORDER

Orders passed by the Respondents u/s 45-A of ESI Act dated 09.02.2022 as per Annexure A by the Respondents claiming Rs.8,98,128/- is stayed subject to condition;

The Applicant has to deposit Rs.3,00,000/- in respect of demand made for Rs.8,98,128/- 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 Respondents through RAPD if Applicant deposits the amount as per the Order.

Call on 18.05.2022.

JUDGE,
ESI Court, Mysuru.