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Writ Petition No.15847 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

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THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.15847 of 2015

&

MP.No.1 of 2015

1.M/s.Lotte India Corporation Limited,
4/169, Rajiv Gandhi Salai(OMR),
Kandanchavadi Bus Stop,
Perungudi Taluk,
Chennai-600 096,
rep. by its Company Secretary,
Mr.T.G.Karthikeyan.

..Petitioner

vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai-600 014.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondent from continuing the proceeding no.CC/CHN/345B/17/Enf/Regl/2015 dated 13.05.2015 and initiating any enquiry.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co
For Respondent : V.Sundareswaran, SPC



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ORDER

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This writ petition has been filed seeking for issuance of a Writ of Mandamus forbearing the respondent from continuing the proceeding no.CC/CHN/345B/17/Enf/Regl/2015 dated 13.05.2015 and from initiating any enquiry.

2. The respondent has conducted the inspection of the petitioner establishment and pointed out certain irregularities and subsequently, vide order dated 13.05.2015, initiated proceedings under Section 7A of the Employees Provident Fund Act, 1952 (in short, 'the Act'). Challenging the same, the petitioner has come forward with the present Writ Petition.

3. The learned counsel for the petitioner would submit that when the employees have agreed that the contribution to PF is payable only on basic salary, it is not permissible for the respondent to contend that the PF contribution should be paid on other elements of remuneration. However, the learned counsel for the petitioner would fairly concede that the issue as to whether the allowances that are being paid to the employees be part of



basic wage, for the purpose of contribution of provident fund, has been succinctly decided by the Hon'ble Supreme Court in the case of “**Regional Provident Fund Commissioner Vs. Vivekananda Vidyamandir and Others**” reported in (2020) 17 SCC 643) and also in “**Himachal Pradesh State Forest Corporation Vs. Regional Provident Fund Commissioner**” reported in (2008) 5 SCC 756.

4. The learned Senior Panel counsel appearing for the respondent while referring to the above decisions, would submit that the issue involved in the Writ Petition has to be decided in the light of these decisions rendered by the Hon'ble Supreme Court and the matter may be remitted back to the respondent for consideration and no interference of the present impugned show cause notice is required.

5. Considering the submissions made by the learned counsel appearing for the parties and on going through the decisions rendered by the Hon'ble Apex Court referred to above, without interfering with the impugned show cause notice, this Court directs the respondent to consider and decide the issue in the light of the decisions rendered by the Hon'ble Apex Court referred to above, after affording an opportunity to the



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petitioner and pass appropriate orders as expeditiously as possible.

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Dr.D. NAGARJUN, J

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6. The Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2023

Index : Yes/No
Speaking order: Yes/No
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To
The Assistant Provident Fund Commissioner,
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