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WP.No.22943 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 22943 of 2013

SALCOMP Manufacturing India Pvt. Limited,
Nokia Telecom SEZ
SIPCOt Industrial Park
Phase III, Chennai-Bangalore Highway,
Sriperumbudur 602 105.
Rep. by its Authorised Signatory.

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Petitioner

Vs

1. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation
Sub Regional Office, Ambattur
R-40, A-1, TNHB Shopping cum Office Complex,
Mugappair Road, Mogappair East,
Chennai – 600 037.

2. The Recovery Officer,
Employees Provident Fund Organisation
Sub Regional Office, Ambattur,
R-40, A-1, TNHB Shopping cum Office Complex,
Mugappair Road, Mogappair East,
Chennai – 600 037.

3. CVE Manpower Consultants
No.16, Tambaram Road,
Sriperumbudur Taluk, Kancheepuram – 603 105



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4. The Branch Manager,
Kotak Mahindra Bank Ltd.,
Teynampet Branch,
Capital Ground Floor,
555, Anna Salai, Teynampet, Chennai – 18.

(R4-Suo Motu impleaded as per Court
order dated 19.08.2013 in W.P.No.22943 of 2013) Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the 2nd and 3rd respondents from initiating any recovery proceedings against the petitioner towards the money owe by the 3rd respondent pursuant to the proceedings of the 2nd respondent in proceedings No.TN/SRO/AMB/68899/CC 1 Area 5/2013.

For Petitioner	: Mr.S.Haroon for M/s.T.S.Gopalan and Co.
For R1 & R2	: Mrs.Sunitha Kumari Standing Counsel
For R3 & R4	: No appearance

ORDER

This Writ Petition has been filed for direction directing the 1st and 2nd respondent from initiating any recovery proceedings against the petitioner towards the money owe by the 3rd respondent in pursuant to the proceedings initiated by the second respondent under Employees Provident Fund and Miscellaneous Provisions Act, 1952 (herein after called as EPF & MP Act).



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2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents 1 & 2 and perused the materials available on record.

3. The petitioner has been engaging third party establishments to carry out certain activities inside its factory. These establishments independently provides services not only to the petitioner but also to many other establishments. The third party establishments are registered under the ESI Act and EPF & MP Act. Accordingly, the third respondent had registered with ESI and EPF & MP Act and its PF Code No.TN/68899 (52659). However, the petitioner had terminated its contract with the third respondent with effect from 17.06.2013 for the reason that the third respondent had defrauded the petitioner.

4. While being so, the first respondent passed an order under Section 8F of the Act and informed that the third respondent had defrauded in payment of PF dues to the tune of Rs.19,73,597/- for the period from March 2013 to April 2013, since the petitioner was the sundry debtor of the



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third respondent, in terms of Section 8F of the EPF & MP Act, the petitioner ought to remit any amount owed to the third respondent. On receipt of the same, the petitioner had sent its reply dated 15.07.2013 and stated that they did not owe any money to the third respondent and if in future any money becomes payable to the third respondent, the petitioner is ready to pay the same to the first respondent. However, again the first respondent issued another communication dated 16.07.2013 and the petitioner replied and reiterated the same.

5. The provision under Section 8F enables the EPFO to issue garnishee orders to the debtors of the defaulter directing them to pay. Such payment by debtors to the organisation has been recognized as good discharge of the debtors debt to the defaulter. It does not empower EPFO to attach bank accounts or proceed against the debtor. That apart, the third respondent is separate and independent establishment, having its own entity and registered under ESI and EPF & MP Act. Even if the petitioner is treated as principal employer of the third respondent, demand for due of third respondent can be made only pursuant to an enquiry under Section 7A



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of the EPF & MP Act in which the petitioner was impleaded as principal employer. However, the first respondent failed to implead the petitioner as principal in any proceedings pertaining to the third respondent and no orders has been passed under Section 7F of EPF & MP Act against the third respondent. Therefore, no action can be taken in terms of Section 8F of the EPF & MP Act. That apart the petitioner does not owe any money to the third respondent and as such, the provision under Section 8F would not be applicable to the petitioner.

6. The learned counsel appearing for the petitioner relied upon the Judgment report in **2011 SCC Online Mad 1350** in the case of **Madurai District Central Cooperative Bank Ltd., Vs. Employees Provident Fund Organisation**, in which the Hon'ble Supreme Court of India held as follows:

18. It is not in dispute that the petitioner is an exempted establishment, under Section 17 of the Act, therefore, is not covered under the Act. The employees of the Contractor by no stretchy of imagination can be treated to be employees of the principal employer, but, as rightly conceded by the learned counsel for the petitioner, the liability of unregistered contractors, would fall on the



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petitioner, in view of Clause 30 of the Employees Provident Fund Scheme, 1952, whereas with respect to the contractors, who are registered with the Provident Fund Department, having independent code number, they are to be treated as 'Independent Employer'.

19. The petitioner, therefore, cannot be treated to be 'principal employer' for the purposes of those contractors. The impugned part of the order, under Section 7A, is also under challenge before this Court and not only the executory order, as contended by the learned counsel for the respondents.

20. In view of the Judgment of the Hon'ble Division Bench of Patna High Court, the contention of the learned counsel for the petitioner, deserves to be accepted. The liability with respect to the contractors registered and having independent code cannot be fastened on the petitioner.”

7. Thus, it is clear that with respect to the contractors, who are registered with the Provident Fund Department, having independent code number, are to be treated as 'Independent Employer' and the treated employer cannot be held as employer under Section 8F of EPF & MP Act.

8. The learned Standing Counsel appearing for the respondents 1



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& 2 vehemently contended that the petitioner, being the principal employer, has already undertaken to pay the dues in terms of Section 8F of the EPF & MP Act, 1952.

9. It is made clear that in pursuant to the order passed under Section 8F of EPF & MP Act, the second respondent issued notice to the fourth respondent dated 16.08.2013 attaching a sum of Rs.19,73,603/- under the provision of Section 8F (x) of EPF & MP Act. This Court suo-motu impleaded the fourth respondent as a party.

10. In view of the above, the proceedings of the 2nd respondent in proceedings No.TN/SRO/AMB/68899/CC 1 Area 5/2013 is hereby quashed. The fourth respondent is directed to retain a sum of Rs.19,73,603/- in the account of the petitioner and the petitioner shall be permitted to operate over and above the said amount. Therefore, the fourth respondent is directed to permit the petitioner to operate his account in full.

11. In the result, this Writ Petition stands allowed. There shall be



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no order as to costs.

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Index: Yes/No

Internet: Yes/No

To

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G.K.ILANTHIRAIYAN,J.



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