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W.P.No.28387 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.28387 of 2017
and WMP.No.30484 of 2017

Indian Oil Corporation Limited,
Tondiarpet Terminal,
Tondiarpet, Chennai – 600 081,
Rep. by its Chief Terminal Manager.

... Petitioner

Vs.

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

2.M/s.J.B.Enterprises,
No.69, 1st Floor, 3rd Cross Street,
M.R.Nagar, Kodungaiyur,
Chennai – 600 118.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records from the First respondent in Proceedings No.TN/RO/Amb./51228/CC-II/Area-10/2017 and quash its order dated 07.09.2017 passed under Section 7A pass such further or other orders



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which this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.G.Anandgopalan for
M/s.Agam Legal Advocates

For R1 : Ms.Sunitakumar, Standing Counsel

For R2 : No appearance

* * * *

ORDER

This writ petition is filed to call for the records of the first respondent in Proceedings No.TN/RO/Amb./51228/CC-II/Area-10/2017 and quash the order dated 07.09.2017 passed under Section 7 A.

2.The petitioner's case is that the petitioner has two terminals for storage and distribution of petroleum products at Tondiarpet and Royapuram Terminals. Both the terminals are factories registered under the Factories Act with Registration Certificate for engagement of contract labourers under the Contract Labour (Regulation & Abolition) Act. The petitioner engaged the contractors having their own PF and ESI Code numbers. The petitioner engaged the second respondent as contractor who used to submit the Bank challans as proof of remittance of PF contribution for the contract labourers engaged by it in the petitioner's premises. In December, 2014, the petitioner received a



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communication from the 1st respondent stating that the second respondent failed to remit the contribution of Rs.8,37,329/- for the period 03/2008 to 02/2013. The petitioner received a similar communication on 27.03.2015, to which the petitioner replied on 17.04.2015, pointing out that the 2nd respondent was engaged as a contractor for the period from September 2007 to July 2010 only and the PF contribution of Rs.4,19,496/- was paid by him, which was evidenced by the challans submitted along with the letter. On 13.08.2013, the petitioner received another communication from the bank stating that Rs.8,93,443/- was put on hold pursuant to the orders of the Recovery Officer of the 1st respondent. The petitioner thereafter made an enquiry and found that the 7 A order was passed on 10.10.2016 in respect of the establishment of the 2nd respondent. The petitioner therefore filed a Writ Petition in W.P.No.28978 of 2016 before this Court challenging the 7 A order as well as the recovery proceedings. This Court vide order dated 18.08.2016 remanded the matter to the 1st respondent herein for fresh consideration. The Court observed that the liability, if at all, could only be that of the 2nd respondent herein, which was an independent establishment. In pursuance of the said order of this Court, the impugned order is passed and therefore the present writ petition.



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3.The learned counsel for the petitioner submits that there is no dispute that the 2nd respondent has separate Code Number and it is an independent establishment, therefore, the impugned order mulcting the liability of the 2nd respondent on the petitioner was unsustainable. The learned counsel relied on the Judgments of this Court in W.P.No.28978 of 2016 as also the order passed in W.A.No.1730 of 2015 in Employees Provident Fund Organisation Vs. M/s.Brakes India Ltd., (Brakes Division). The learned counsel therefore prayed that the impugned order be set aside and the writ petition be allowed.

4.The learned counsel appearing for the respondents relying on the counter filed by the respondents submitted that the object of the Act was to extend the social security benefits like PF, Pension and Insurance benefits to the working class. Under the provisions of the Act and the scheme the principal employer was liable to remit the dues of the contractor. The learned counsel therefore submitted that the impugned order was valid and did not call for any interference.

5.I have heard both the learned counsels and I have perused the materials



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on record.

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6.It is undisputed that the petitioner had two terminals one in Tondiarpet and other in Royapuram for storage and distribution of petroleum products. It is also undisputed that the petitioner engaged contractors during the relevant period i.e. 03/2008 to 02/2013. It is seen that for the terminal at Tondiarpet, the petitioner had engaged the contractors J.B.Enterprises from 01.09.2007 to 31.07.2010 and G.S.Viswanathan for a period from 01.08.2010 to 28.02.2015. Admittedly both the said contractors had separate Code Numbers. As per the following judgments of this Court as the contractors were allotted separate code numbers, the respondents could not proceed against the petitioner as a principal employer.

7.The Hon'ble Judge of this Court in the case of The Madurai District Central Co-operative Bank Ltd., Vs. Employees Provident Fund Organization and Recovery Officer in W.P.(MD) No.3469 of 2009 and M.P.(MD) No.1 of 2009 held as follows:

“17.On consideration, I find force in the contention raised by the learned counsel for the petitioner.

18.It is not in dispute that the petitioner is an



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exempted establishment, under [section 17](#) of the Act, therefore, is not covered under the Act. The employees of the contractor, by no stretch 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 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.”

8.Following the aforesaid Judgment another learned Judge of this Court in M/s.Brakes India Limited, (Brakes Division) Vs. The Employees Provident Fund Organization in W.P.No.391 of 2014 held as follows:

“17.This court in the judgment reported in 2012 LLR



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702 (The Madurai District Central Co-operative Bank Ltd rep by its Special Officer vs Employees' Provident Fund Organisation), cited supra has clearly held that 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".

18.In the case on hand, the Contractor was allotted with EPF allotment number vide No.TN/VLR/38789/SDC/2013 in the year 2003 itself. As per the ratio laid down in the judgment of this Court, the Contractor viz., Mr.A. Govindaraj should be treated as an independent employer.”

9.When the later Judgment was challenged before the Hon'ble Division Bench in W.A.1730 of 2015 vide dated 18.08.2021 the Hon'ble Division Bench confirmed the order of the learned Single Judge. Therefore it is clear that the impugned order of the 1st respondent saddling the petitioner with liability to remit the dues of the 2nd respondent cannot be sustained.



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WEB COPY 10. The above legal position was clarified even in the earlier round of litigation, but the Authority without referring to the legal position passed the impugned order saddling the liability of the 2nd respondent on the writ petitioner.

11. In view of the above discussion the impugned order dated 07.09.2017 is set aside and the writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

01.03.2024

Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
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To

1. The Assistant Provident Fund Commissioner,
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Sub-Accounts Office, Ambattur,
R.40A 1, TNHB Shopping cum-Office Complex,
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N.MALA, J.

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