06.02.2025
Ct. No. 30
S.L No. 5
SM

WPA 28344 of 2024

M/S. Frostees Export (India) Pvt. Ltd.
Vs
Regional Provident Fund Commissioner & Ors.

Mr. Ranjay De, sr. adv.
Mr. Nayan Rakshit
Mr. Nalay Rakshit
Mr. B. Banerjee
Mr. A.A. Bose
.....for the petitioner

Mr. Avijit Tewary
.....for the respondents (P.F. Authorities)

1. The present writ application has been preferred against a show cause notice dated 05.11.2024 issued by the respondents herein. Vide the said notice, the petitioner has directed to refund a specified sum.

2. The relevant part of the notice is as follows.

"And whereas on going through the Inspection Report dated 01-10-2024 of the Enforcement Officer it reveals establishment has availed ABRY benefits to the tune of of Rs.36,69,622/- (inclusive of Employees' Share & EPS) for the period from 12/2020 to 01/2024 and also deducted Employees' Share of EPF contributions from the salary of the employees in respect of whom ABRY benefit had been availed in gross violation of (Vii) of the Scheme Guidelines under ABRY conveyed vide EPFO Circular

No.CAIU/011(16)2020-21/ABRY/1179 dated 31.12.2020 and the establishment is therefore required to refund the said misused amount of ABRY benefits for the aforesaid period. And whereas, by the above said act of gross irregularities the establishment Section 14B & Interest Under Section 7Q of the EPF & MP Act 1952. ***Now, therefore in the light of the above circumstances you are directed to remit the total amount of Rs.36.69.622/-*** *(Rupees Thirty Six lakh Sixty Nine thousand Six hundred and twenty Two) (only through DEMAND DRAFT in favour of "****REGIONAL PROVIDENT FUND COMMISSIONER, KOLKATABU”*** *within 7 days from the receipt of this communication in connection with misuse of ABRY Benefit for the period 12/2020 to 01/2024 in respect of the ABRY beneficiaries as mentioned in the aforesaid Inspection Report and also to show cause as to why legal action as contemplated under the provision of the Act will not be initiated for the above said irregularities against the establishment and its employer/responsible persons, failing which necessary action will be initiated as per law.”*

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the Provident Fund Authorities. It appears from the materials on record that the petitioner herein had taken the benefit as granted under the “Aaatmanirbhar Bharat Rozgar Yojona”, a

scheme of the Central Government dated 12.11.2020 during the Covid pandemic.

4. It appears from the salary statement (ABRY) for the period from December 2020 to January 2024, that PF deducted during that period from the employees was to the **tune of Rs. 1,56,094/-**.

5. It is admitted by the petitioner that the sum was deducted due to inadvertence and the petitioner is willing to repay the whole amount which was erroneously deducted for the said period.

6. It is further submitted that the total claim of Rs. 36,69,622/- as demanded is the total contribution under the scheme and **only a sum of Rs. 1,56,094/-, is the amount which was erroneously deducted** and as such the petitioner is liable to repay only the said amount of Rs. 1,56,094/-.

7. Considering the said facts and the materials and the relevant provisions of the Act, the said deduction is an irregularity and the respondent authorities are at liberty to act in accordance with law in respect of such irregularity. But in the present case it prima facie appears that the total demand of Rs. 36,69,622/- made by the respondent is prima facie erroneous in view of the supporting documents filed and the discussion above.

8. Accordingly, the order under challenge dated 05.11.2024 being prima facie not in accordance with the

materials on record and thus not in accordance with law is hereby set aside.

9. The petitioner herein is directed to deposit a sum of Rs. 1,56,094/- (One lakh fifty six thousand ninty four only) only through Demand Draft in favour of **"Regional Provident Fund Commissioner, Kolkata"** along with the statutory interest within a period of 10 days from the date of this order.

10. It is clarified that this Court has not gone into the other irregularities in the matter for which the respondents are at liberty to proceed in accordance with law. This Court has only considered the amount which was erroneously deducted and the decision in this writ application is limited only to the said issue.

11. The writ application is accordingly disposed of.

12. Applications, if any, connected thereto stand disposed of consequently.

13. Interim order, if any, stands vacated.

14. Photostat certified copy of this order, if applied for, being given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]