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W.P.No.4182 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4182 of 2025

And

W.M.P.No.4675 of 2025

MRF Limited
Rep. by its General Manager
Arakonam – Tiruttani Road,
Ichiputhur,
Arakonam – 631 003.

... Petitioner

Vs.

1.Employees' Provident Fund Organization,
Rep. by its Regional P.F. Commissioner – II,
S-1, TNHB, Phase – III, Sathuvachari,
Vellore – 632 009.

2.M/s.Padma Associates,
Rep. by its Proprietor
G.Ramesh

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records connected with impugned order Ref. No.TN/VLR/74567/Recovery/2025/3687 dated 09.01.2025 on the file of the first respondent and quash the same.



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For Petitioner : Mr.M.Vijayan
for M/s.King and Partridge
For Respondents : Mr.P.K.Panneer Selvam for R1
R2 – No Appearance

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records connected with impugned order Ref. No.TN/VLR/74567/Recovery/2025/3687 dated 09.01.2025 on the file of the first respondent and quash the same.

2.The learned counsel appearing for the petitioner submitted that the petitioner company during the course of business engaged contractors and the contractors in turn employed various persons. The petitioner company is registered with the provident fund authorities and has a separate code in respect of the workmen engaged by the petitioner company. The second respondent is a registered contractor and the second respondent has independent PF code. The second respondent engaged certain contractors at the petitioner premises and failed to remit the statutory contributions and administrative charges for the period from April, 2010 to October, 2013. Thereafter proceedings under Section 7A of the EPF Act was initiated and the second respondent remitted the full determined amount.



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3.The learned counsel appearing for the petitioner further submitted that thereafter, the first respondent passed recovery notices requiring the petitioner company to remit a sum of Rs.58,01,263/- towards penal damages and interest and challenging the same, the petitioner filed W.P.No.21648 of 2018 and this Court vide order dated 21.09.2023, allowed the said writ petition. Whiles, the first respondent passed the impugned order directing the petitioner to pay a sum of Rs.11,17,840/- towards penal damages under Section 14 B of EPF Act and Rs.5,63,346/- towards interest under Section 7Q of the EPF Act for the period April, 2013 to September, 2015.

4.The learned counsel appearing for the petitioner further submitted that the petitioner company has a separate PF code and the second respondent has a separate PF code. When the second respondent has a separate PF code, the second respondent is an establishment and principal employer and moulding the liability as against the petitioner is not sustainable one. The learned counsel further submitted that similar issue was considered by this Court in the case of ***Indian Oil Corporation Limited Vs. The Assistant Provident Fund Commissioner and another [W.P.No.28387 of***



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2017 dated 01.03.2024] and this Court allowed the said writ petition.

5.Per contra, the learned counsel appearing for the first respondent submitted that as per Section 8A of the EPF Act, the principal employer has to deduct the amount from the contractor. If the contractor fail to pay the contribution then the principal employer has to pay the contribution either in his account or contractor account. In the present case, the petitioner did not deduct any amount from the contractor and the contractor did not pay any contribution, thereby the first respondent passed the impugned order.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the first respondent and perused the materials available on record. Though notice has been served on the second respondent, there is no representation for the second respondent.

7.Admittedly, the petitioner company is registered with the provident fund authorities and has a separate PF code. It is equally



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undisputed fact that the second respondent is a registered contractor and has a separate PF code. Admittedly, no order under Section 7A of the EPF Act was passed against the petitioner and order under Section 7A of the EPF Act was passed only against the second respondent. In the absence of order under Section 7A of the EPF Act against the petitioner, consequential recovery order cannot be passed against the petitioner.

8. Similar issue was considered by this Court in the case of ***Indian Oil Corporation Limited Vs. The Assistant Provident Fund Commissioner and another [W.P.No.28387 of 2017 dated 01.03.2024]***, the relevant portion of which reads as follows:

"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 exempted establishment, under section



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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 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



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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 1 st respondent saddling the petitioner with liability to remit the dues of the 2 nd respondent cannot be sustained.

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."

9.Perusal of the decision cited supra makes it clear that the contractors, who are registered with the provident fund authorities,



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having independent PF code are to be treated as 'independent employer'. In the present case, the second respondent has a separate PF code and hence the second respondent is to be treated as independent employer. Therefore, molding the liability as against the petitioner is not sustainable one.

10. In view of the above, the order dated 09.01.2025 in Ref. No.TN/VLR/74567/Recovery/2025/3687 on the file of the first respondent is set aside and the writ petition is allowed. However, liberty is granted to the first respondent to work out the remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

20.02.2025

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1. Employees' Provident Fund Organization,
Rep. by its Regional P.F. Commissioner – II,
S-1, TNHB, Phase – III, Sathuvachari,
Vellore – 632 009.

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