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.4665 of 2025
And
W.M.P.No.5161 of 2025

M/s.Nemak Aluminium Castings India Pvt. Ltd.,
Ford Supplier Park II, Chitamannur Village,
Melrosapuram P.O.,
Chengalpet – 603 204
Represented by its Authorised Signatory ... Petitioner

Vs.

The Regional Provident Fund Commissioner II (C & R),
Employees Provident Fund Organisation,
Regional Office/Tambaram,
No.3, Rajaji Salai, West Tambaram,
Chennai 600 045. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondent from initiating any recovery proceedings against the petitioner pursuant to the recovery notice dated 09.01.2025 in proceedings No.TB/TAM/ENF/CC-II/522/1332408/2024.

For Petitioner : Mr.Anand Gopalan
for M/s.Agam Legal
For Respondent : Mr.Thirunavukkarasu

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus forbearing the respondent from initiating any recovery proceedings against the petitioner pursuant to the recovery notice dated 09.01.2025 in proceedings No.TB/TAM/ENF/CC-II/522/1332408/2024.

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 PF code. One M/s.IDA Scudder Buildologist was engaged by the petitioner as a contractor for civil foundation work activities and for installation of machinery during 2016 – 2017. The said contractor is also registered with the provident fund authorities and has a separate PF code. The respondent has issued a recovery notice dated 09.01.2025 to the petitioner claiming that a sum of Rs.7,03,840/- payable by the said contractor must be paid by the petitioner.

3.The learned counsel appearing for the petitioner further submitted that the petitioner company has a separate PF code and M/s.IDA Scudder Buildologist has a separate PF code. When M/s.IDA Scudder Buildologist has a separate PF code, the said contractor 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 2017 dated 01.03.2024]*** and this Court allowed the said writ petition.

4.Per contra, the learned counsel appearing for the 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 respondent passed the impugned order.

5.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on record.

6.Admittedly, the petitioner company is registered with the provident fund authorities and has a separate PF code. It is equally undisputed fact that M/s.IDA Scudder Buildologist is a contractor and has a separate PF code. Admittedly, no order under Section 7A of the EPF Act was passed against the petitioner. In the absence of order under Section 7A of the EPF Act against the petitioner, consequential recovery order cannot be passed against the petitioner.

7.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:*
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> > *"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 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 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."

8.Perusal of the decision cited supra makes it clear that the contractors, who are registered with the provident fund authorities, having independent PF code are to be treated as 'independent employer'. In the present case, M/s.IDA Scudder Buildologist has a separate PF code and hence M/s.IDA Scudder Buildologist is to be treated as independent employer. Therefore, molding the liability as against the petitioner is not sustainable one.

9.In view of the above, the respondent is restrained from initiating any recovery proceedings against the petitioner pursuant to the recovery notice dated 09.01.2025 in proceedings No.TB/TAM/ENF/CC-II/522/1332408/2024 and the writ petition is allowed. However, liberty is granted to the 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
The Regional Provident Fund Commissioner II (C & R),
Employees Provident Fund Organisation,
Regional Office/Tambaram,
No.3, Rajaji Salai, West Tambaram,

Chennai 600 045.

M.DHANDAPANI,J.
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