IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 22978 of 2025

M/s. Avery India Limited
Versus
Union of India & Anr.

For the Petitioner : Mr. Soumya Majumder, ld. Sr. Adv.
Ms. Sanjukta Dutta.

For the Respondents/UOI : Mr. Shiv Chandra Prasad.

Judgment reserved on : 11.09.2026

Judgment delivered on : 07.10.2026

Shampa Dutt (Paul), J.:

1. Affidavit of service be kept with the record.

2. The writ application has been preferred challenging an order dated 31.07.2025 passed under Section 7A of the Act, thereby levying surcharge for the period from April, 2019 to March, 2021.

3. The petitioner admits that the said order is appealable, but the petitioner is before this Court challenging the vires of a Section/Act.

4. The petitioner's case rests on the fact that principle of natural justice has not been followed and the order under challenge is an

abuse of the process of law, as it has not been passed on the basis of the materials on record.

5. Mr. Majumder, learned Senior Counsel appearing for the petitioner has brought the notice of this Court to the letter issued to the RPF Commissioner by the Chief Financial Officer of the company wherein, it has been stated as follows:-

> ***"In fact, there was no loss to the PF Trust as the investment of the PF amount was done in the most secure manner as a FD in the Scheduled Bank which is a more secured investment, in the pandemic era of COVID-10 specially, as compared to other investments, even notified by the Central Government."***
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> *The keeping the amount in FD for the FY 2020-21 because of COVID-19, and subsequently, surge of the COVID-19 as the BOT was expecting advance against the requirement of the beneficiaries during COVID-19 so this extra amount was kept in FD to meet the ad hoc requirement of the beneficiaries during COVID-19.*
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> *It is worthwhile mention that the BOT has not done any investment in unsecured manner for making any loss to the PF Trust, and FD was made due to unforeseen circumstances of the COVID-19."*

6. The Learned Counsel further relies upon para 18 Clause (C) of the order under challenge wherein, the authority concerned has held as follows:-

> *"The surcharge is imposed only in cases of deviation in the pattern of investment and* ***serves to compensate the fund and, indirectly, the employee for the loss***

> ***of interest or opportunity cost.*** *It is in the nature of a* ***quasi-compensatory financial consequence,*** *similar to interest, and imposed for failure to adhere to the exemption conditions."*

7. Finally, the Learned Counsel challenges the surcharge/penalty imposed by the authority concerned in its order, arguing that the order under challenge is based on contradictory findings, even **though there was no loss caused to P.F. trust.**

8. The authority concerned has further noted in the order as follows:-

> *"This is to further order that* ***the Department will be at liberty to re-open the case as and when any information regarding investments is received****, collaborated with any cognizable, maintainable and reliable documents or evidence, for any period related to the instant case period or any periods beyond this period."*

9. In course of hearing the Assistant Provident Fund Commissioner has placed a report before this Court in the present case wherein it has been stated as follows:-

> *"with reference to the UO note bearing Ref. No EPFO/WD/PRB/Legal/322/F-666 it is to state that sending a recovery certificate is an internal official formality and is a routine nature of work in which a recovery certificate is issued in the month of April regarding assessed dues pertaining to the previous financial year. However, no recovery proceedings has been initiated either from the end of the recovery cell or*

from the compliance cell keeping in mind the stay order which has been given to the case."

10. The petitioner's case is that the petitioner is an establishment exempted under the EPF Scheme.

11. In 2022 EPFO audit revealed certain deviations regarding investment pattern during the period 2020-21.

12. **Instead of investment in bonds and debentures, Board of Trustees had made fixed deposit of amount.**

13. Alleging **violation of condition no.17 of Appendix A, to para 27AA of EPF Scheme, an inspection note was prepared by EPFO for assessing surcharge during the period 2019-2020 for an amount of Rs.11,41,510/-.**

14. The circular of 2017 is regarding levy of surcharge and rates thereof as framed by Central Board of Trustees.

15. Notice was issued for assessing surcharge of Rs.30,19,936/- on account of deviation of investment.

16. Management took a point of jurisdiction and requested to drop the action against the employer.

17. Surprisingly, show-cause notice was issued both to the employer and BOT and it was wrongly mentioned that the said provision of EPF Scheme applied to the establishment.

18. Various amounts of surcharge had been mentioned at different point of time of the proceedings.

19. Order dated 31.7.2025 was passed assessing surcharge of Rs.39,86,669/- for the period from 04/2019 to 03/2021 alleging violation of para 27AA of EPF Scheme.

20. The grounds of challenge of the impugned order is that there is discrepancy of figure of surcharge. **The authority further relied upon Appendix to Para 27AA of the EPF Scheme which is not applicable to exempted establishments.**

21. It is further stated that even in the absence of statutory powers, if the RPFC can send surcharge notice after scrutiny of necessary documents, if situation arise, the same is not in accordance with law.

22. It is further stated that the impugned order has not considered that it was during the COVID period when the said investments were made and there was absolutely no loss caused to the authorities concerned.

23. RPFC does not have statutory power to levy surcharge for deviation in investment pattern. A statutory authority must act in accordance with the mandate of the statute, and not beyond that.

24. Surcharge has been levied for alleged violation of the condition of Appendix to para 27AA of the EPF Scheme. EPF Scheme does not apply to exempted establishment.

25. Petitioner has relied upon the following judgments:-

(i) (1996) 2 CHN 167 [M/s. Electric Lamp Manufactures (India) Ltd. vs. The Regional Provident Fund Commissioner & Ors.].

(ii) WPA 6138(W) of 2009 & Ors [Caledonian Jute & Industries Ltd. & Anr. Vs. Union of India & Ors.].

26. The petitioner further states that Board of Trustees and employer have been interchangeably used in the proceeding. This is not the provision of EPF&MP Act, 1952. Section 14 of the Act makes a clear distinction between employer and Board of Trustees.

27. Sections 20, 21 and 22 of the Act empowers the Central Government to make rules and give direction to the **Central Board of Trustees** for efficient administration of the Act. Since, therefore, specific power is conferred on the Regional Provident Fund Commissioner for Central Board of Trustees, the power to levy surcharge is beyond the statutory provisions.

28. It is stated that once money leaves the control of the employer and also of the Board of Trustees, the question of levying surcharge on the employer cannot arise. The action of RPFC is thus arbitrary and violative of Article 14 of the Constitution of India.

29. **The respondent no. 2** has contested the writ application and has stated that the surcharge due to the deviation in the payment of investment was calculated as Rs.11,41,510/- for the year 2019-20 and the same was conveyed through the correspondence dated 02.09.2021 by the EO through the Compliance Audit Report. Further, the letter issued dated 27.06.2022 was basically the Compliance Audit Report for the year 2020-21 by the EO, wherein it was mentioned that the establishment had again deviated from the pattern of investment set by the Government of India and this

matter was further clarified to the establishment through the letter dated 11.01.2023 as that particular letter's contents were focused on the irregularities done by the establishment in the year 2020-21. Further, the department issued the EO report to the establishment dated 13.12.2024 which had some corrections in the surcharge value for the financial year 2019-20 thereby increasing the surcharge to Rs. 16,87,686/-. However, in continuation to the above report, the establishment had provided some documents regarding the investment made in different category during 2019-20 and it was found that the **BOT had made 100% of investment for the FY 2019-20 in Category-II only.** Therefore, scrutinizing the relevant documents the surcharge amount was finally calculated to be Rs.9,66,733/- for the FY 2019-20 and this matter was further informed to the establishment through the report of the EO dated 31.07.2025.

30. Therefore, there is no question of whether statutory powers exists in this context, as the Commissioner can send surcharge notice after scrutiny of the necessary documents if the situation arises.

31. To further elucidate this matter whether the BOT can be held accountable for the deviation in the pattern of investment the respondent/EPF states that the BOT is nothing but a Board formed under the Chairmanship of the employer for the management of the Provident Fund of the establishment thereby making it a part of the establishment with additional supervision powers vested, who is accountable to the Employees' Provident

Fund Organisation for the proper accounts of the receipts into and payment from the Provident Fund and their balance in their custody.

32. **The surcharge under para 27AA is regulatory and compensatory major, not a tax or penal levy. It is imposed on the Board of Trustees (not employees) to ensure compliance with prescribed investments norms and to safe guard employees' provident fund interest.** Triggered only by deviation from approved investment patterns, the surcharge compensates for potential loss or opportunity cost, functioning similarly to interest rather than punishment. Unlike Section 14, which provides for criminal penalties, this surcharge is a regulatory safe guard. The Supreme Court's reasoning in ***Hindustan Times Ltd. Vs. Union of India & Ors., AIR 1998 SC 688,*** supports such levies as compensatory rather than penal, specially for exempted establishment managing their own trusts.

33. The contention raised by the petitioner is not sustainable in view of various provisions of the Act and the Scheme prescribed for levying of surcharge in case of wrong pattern of investment made by the exempted establishment.

34. The 7A authority has passed the order which is legally tenable in the eye of law as Appendix to para 27AA has not been declared as ultra vires, hence the writ petition is devoid of materials and should be dismissed in limine.

35. Vide the impugned order dated 31.07.2025 under Section 7A of the Act the authority has held:-

> *"2. And whereas The establishment was granted exemption under Section 17(1) of the act thereby enjoying independence to maintain its own trust funds with the obligations to abide by the conditions as per Appendix-A of para 27AA of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as the Scheme) for maintenance of its Exemption status.*
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> *3. Now, condition no. 17 of appendix-A of para 27AA of the EPF Scheme, 1952 read as follows Board of Trustees shall invest the monies of the provident fund as per directions of the Government of India from time to time. Failure to make Investments as per directions of the Government shall make the Board of trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner (CPFC) or his representative.*
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> *17. ……Thus, Para 27AA is not an independent imposition of fiscal liability, but a provision integrated into the structure of the statutory Scheme and validly grounded in the parent Act. Until and unless set aside by judicial authority, these provisions continue to hold the force of law and are applicable.*
>
> *18. ……..*
>
> *c. The surcharge is imposed only in cases of deviation in the pattern of investment and serves to compensate the fund and, indirectly, the employee for the loss of interest or opportunity cost. It is in the nature of a quasi-compensatory financial consequence, similar to interest, and imposed for failure to adhere to the exemption conditions."*

36. Here the authority could not show any loss caused by the petitioner herein.

37. The order principally is based on the alleged violation of condition 17 of Appendix A of Para 27AA of the EPF Scheme, 1952 and the authority finally imposed surcharge/penalty on holding:-

"V. CONCLUSION AND DECISION

In view of the above, it is clear that:

- *The surcharge under Para 27AA is a valid regulatory levy,*
- *It is within the powers conferred under Sections 5 and 17(1A) (1) of the EPF & MP Act, 1952,*
- *It is not a tax or penalty requiring separate legislative sanction,*
- *It is not discriminatory, but a reasonable condition of exemption,*
- *It is enforceable under law, and does not suffer from any infirmity in terms of legislative competence or constitutional validity.*

Accordingly, the employer's contention that the surcharge under Para 27AA is ultra vires the EPF Act, 1952 is rejected. Having heard both parties I am of the firm view that the view of the D/R is the correct and the calculated surcharge/penalty needs to be paid by the establishment....."

38. In ***M/s. Electric Lamp Manufactures (India) Ltd. & Anr. vs The Regional Provident Fund Commissioner & Ors., 1996 SCC OnLine Cal 46,*** the Court held:-

> ***"17.*** *Section 17 which is relevant for the purpose of this application empowers the appropriate Government to exempt whether prospectively or retrospectively from the operation of all or any other provisions of the scheme by a notification in the Official Gazette and subject to such conditions mentioned therein. Such exemption is to be granted to any establishment to which the said Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in s. 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the said Act or any Scheme in relation to the employees in any other establishment of a similar character. Sub-clause V of Clause D of sub-s. (1A) of s. 17 provides that whether an exemption has been*

granted to under clause A of sub-s. (1) the Board of Trustees constituted under clause (b) shall perform such other duties as may be specified in the scheme. It is not disputed that in terms of clause (b) of sub-section 1-A of s. 17 of the said Act the Petitioner has established a Board of Trustees for the administration of the provident fund in terms of the aforementioned scheme framed in terms of the aforementioned notification of exemption of dated 9th July 1963. It is also not in dispute that in terms of the said scheme a pattern of investment has been fixed and such investment had been made in accordance with the investment pattern prescribed in the notification dated 18th January 1993. Such investment has also received recognition under Rule 3(1) of Part-A of the Schedule of the Income-tax Act 1961 in terms of the order dated 5.8.1963. Although Mr. Chatterjee appearing on behalf of the petitioner, as noticed hereinbefore, submitted that the petitioner is liable in terms of the scheme appended that the letter dated 12.6.90, the respondents have neither annexed nor have been able to produce a copy of the said notification. It appears that the letter dated 12.6.90 was issued in relation to grant of exemption under s. 27A of the Scheme vis-a-vis compliance in respect of the employees employed by or through contractors. The petitioner has categorically contended that the said Scheme has not come into being as it has not acceded to the advice of the Regional Provident Fund Commissioner purported to be conveyed to it in terms of the decision arrived at by the Central authority. The only question which, therefore, falls for our consideration is as to whether the employer has any liability to make good the deficiencies in terms of the impugned orders or not.

22. *Thus once a Trust is constituted the petitioner has no say in the matter. In the event any violation of the terms of the conditions of Scheme takes place, the remedy of the respondents is to withdraw the exemption for breach of any of the conditions referred to in the Schedule appended to the said notification dated 5th July 1963 or proceed as against the trustees in terms of s. 14(2A) of the Act, if any occasion arises therefor. There cannot be doubt whatsoever that the said Act is a beneficient Act but as is well known a beneficient statute should not be so construed so as to operate in a different field and make a person liable to*

which it is not entitled under the said Act or the Scheme framed thereunder. It is true that paragraph 60 of the Scheme framed under s. 5 of the Act provides for a declaration as regards interest, but the said provision imposes a duty upon the Commissioner and not upon the Trustees. Our attention has not been drawn to any provision of the Scheme in terms whereof while performing any duties thereunder the Board of Trustees is required to pay the same interest which may be declared by the Central Government in terms of paragraph 60 of the said Scheme. It is, however, not necessary for us to consider the matter any further as admittedly the Board of Trustees is not being proceeded with by the respondents. Suffice it to say that when a scheme is framed, the appropriate Government has to satisfy itself as to whether exemption if granted shall fulfil the conditions specified Under s. 17 or not. Such satisfaction must be arrived at by the appropriate Government at the time of grant of such an exemption and the same is not a continuous process. The Scheme framed in terms of s. 17 of the Act has also a statutory force. In Tata Iron and Steel Company Limited (supra), upon which strong reliance has been placed by Mr. Chatterjee indicates three things:—

(1) The exemption under s. 17 is incorporated in the Act for getting better benefits for the employees of an establishment;

(2) The exemption is granted with a view to avoiding duplication that is to say, for framing a scheme by the appropriate Government on the line as framed by the establishment itself; and

(3) That the exemption is not meant to deprive the employees concerned of the benefit of a provident fund, but to ensure to them the continuance of the benefit.

24. *It is now well known that a statutory authority must act within the four corners of the Act. It, unlike a natural person can perform only such acts what are contemplated under the statute and cannot do anything which is not provided for therein. In terms of clause 16 of the Scheme framed under s. 17 of the Act, the Central Government could have issued a notification imposing additional condition but unless the same is done, the Board of Trustees, far less the petitioner, can be saddled with any additional liability*

to which is not contemplated therein. Submissions of Mr. Chatterjee to the effect that the terminologies used in sub-s. (1) of s. 17 should be construed in such a manner so as to provide for the same facilities as would be conferred by the Central Government upon employees of the other establishment by way of continuous process cannot be accepted. There cannot be any doubt that the rate of interest is one of the facilities which can be conferred upon under the said Act but such other benefits may include:—

(a) Quicker and speedier payment of refundable loan.

(b) Quicker and speedier payment of non-refundable loans.

(c) Quicker and speedier settlement of the outgoing member's account.

(d) Quicker and speeder settlement of the members account who dies in harness.

(e) Quicker and speedier settlement of transferred member's account."

39. In ***Caledonian Jute & Industries Ltd. & Anr. vs Union of India & Ors., (WPA 6138(W) of 2009, decided on 20.04.2026),*** this Court decided as follows:-

"36. Accordingly, the writ application (20) herein are all disposed of on holding that:-

a) *Para 27AA of the employees provident fund scheme, with appendix „A" is* ***not ultra vires*** *of the employees provident fund and miscellaneous provisions act, 1952.*

b) Para 27AA of the employees provident fund scheme, 1952 with appendix 'A' is not applicable to the establishments exempted under Section 17 of the EPF Act, unless and until, the conditions of exemption is modified by way of an amendment in a notification published in official gazette making the provision of Para 27AA of the EPF scheme applicable to such exempted establishment.

c) *Thus, all notices and orders challenged in the writ applications herein, issued stating non compliance/violation of Para 27AA/appendix „A" of the employees provident fund scheme, 1952,* ***are hereby quashed and set aside."***

40. The authorities have thus proceeded against the company 'the managing director of the establishment' even though there exists **a Board of Trustee,** the establishment being an exempted one.

41. Thus in view of the judgment in ***M/s. Electric Lamp Manufactures (India) Ltd.(Supra)*** and ***Caledonian Jute & Industries Ltd.(Supra),*** Para 27AA of the EPF Scheme being not applicable in the present case, the impugned order dated 31.07.2025 passed under Section 7A of the EPF act applying Para 27AA of the EPF Scheme, being not in accordance with law **is set aside.**

42. WPA 22978 of 2025 is allowed.

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

44. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)