CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 188/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/S D S S Security services
F. N. 203, Sagar Appartment 1,
372 Sarv Dharm Colony,
B-Sector Kolor Road Bhopal (M. P.)-462042

Appellant

V/s

1. **Assistant Provident Fund Commissioner**
   Employees' Provident Fund Organization,
   Sub-Regional Office, 59,
   Arera Hills Bhopal- 462011

2. **National Rural Health Mission/ R C H**
   Rajaya Swasthiya Samiti Arera Hills,
   Bank of India Bhawan Third Floor, Jail Road, Bhopal (MP)

Respondents

Shri Pranay Choubey	:	**Learned Counsel for Appellant.**
Shri Harshit Patel	:	**Learned Counsel for Respondents.**

JUDGMENT

(Passed on 13th day of July, 2026)

The present appeal is directed against two orders of the Respondent Authority dated 23.06.2016, passed by it under Section 14B and 7Q of the Employees Provident Fund and Miscellaneous Provision Act, 1952,(in short the 'Act'), whereby the Respondent Authority has recorded a finding that the Appellant Establishment has defaulted in timely deposit of PF dues of its employees for the period 08/2004 to 12/2013 and has assessed the amount of penal damages at Rs. 13,32,979/- and amount of interest at Rs. 7,42,030/-, has directed the Appellant Establishment to deposit the same.

Facts connected, are mainly that the Appellant Establishment is a registered company, which is in business of providing security services and is covered under the Act. It had entered into a contract with National Rural Health Mission (Respondent No.2) in the Appeal, for the supply of security guards, for which it was paid by the Mission. The Principal Employer i.e. the National Rural Health Mission, delayed the payment of bills, which resulted into late payment of wages by the Appellant Establishment to its employees and hence delayed in deposit of PF dues with the Respondent Authority. One Enforcement Officer from the office of Respondent Authority, conducted inspection on 04.05.2011 and framed a visit note dated 04.05.2011, in which Principal Employer were directed by the Enforcement Officer to submit documents mentioned in his report on 10.05.2011. Same direction was issued by the Respondent Authority on 23.02.2012. The inspection note and communication of Respondent Authority (photocopy) are ***Annexure A-3 &A-4*** to the Memo of Appeal. The Principal Employer(i.e. the Respondent No. 2) filed their reply dated 04.06.2012 (Annexure 5) to the appeal and documents mentioned in the reply, which were copies of work orders issued by the Mission, list of employees with wages and copies of TDS certificates issued by them to the Appellant Establishment. Since, the Principal Employer failed in timely payment of the contract money to the Appellant Establishment, the Appellant Establishment sent a communication dated 03.08.2012 and 11.10.2012 to them, requesting them to deposit the PF contribution directly with the Respondent Authority (copies of these communications are filed as ***Annexure A-6*** to the memo of Appeal).

Again, a similar request was made by the Appellant Establishment on 13.02.2013 vide its communication making the same request, requesting them to deposit the PF contribution of Rs. 10,37,011/- relating to the employees for the period 10/2006 to 07/2012, this communication is ***Annexure A-7*** to the Appeal. The Respondent Authority also directed the Respondent No.2 i.e. the Principal Employer vide its communication dated 15.02.2013, 20.03.2013 and 10.04.2013 to deposit the PF dues of employees of Appellant Establishment to the tune of Rs. 10,37,011/- for the period 10/2006 to 07/2012. These communications are ***Annexure A-8*** to the memo of Appeal.

Thereafter, the Respondent No.2,the Principal Employer deposited the PF contribution for the period i.e. 10/2006 to 07/2012, amounting at Rs. 10,37,011/- vide its letter dated 09.05.2013 with two copies of cheques dated 08.04.2013 and 29.05.2013, these documents are collectively ***Annexure A-9*** to the memo of Appeal.

The Appellant Establishment then received notice and statement with regards to interest and penal damages for belated remittance for the period 01.04.1996 to 14.03.2014 and were asked to pay the amount of damages at Rs. 3,06,908/- and interest at Rs. 2,01,987/-, this notice dated 20/03/2014 is ***Annexure A-10*** to the memo of appeal. Again the Respondent No.1 issued another notice dated 27.11.2015, and the statement for damages and interest for belated remittances for the period 08/2004 to 12/2013, which was damages at Rs. 13,32,979/- and in interest of Rs. 7,42,030/-. This notice is ***Annexure A-11*** to the memo of appeal. The Appellant Establishment replied the notice by way of its representation dated 06.01.2016 ***(Annexure A-12)*** to the memo of Appeal, taking a plea that they had supplied security guards to the Respondent No.2, who made delayed payments to them, which was a reason for delay, in fact on the request of Appellant Establishment, the Respondent No.2 directly deposited the PF dues from the payment due in favour of the Appellant Establishment. Hence, there was no occasion for interest and damages. The Respondent Authority did not consider it and passed the impugned order and assessment, hence this appeal.

The grounds of appeal are mainly that, the impugned order is contrary to law and fact, passed by the Respondent No.1, without giving reasonable opportunity of hearing, hence bad in law. The impugned findings are illegal and contrary to facts, the Respondent No.1 has acted in dual capacity i.e. as a Prosecutor and as a Judge, which is against law. The Respondent Authority did not consider the fact that delay in deposit was due to non clearance of dues from the Principal Employer i.e. Respondent No.2 and the Appellant Establishment did not have the required *mens rea* for the delay, thus committed an error. The Respondent No.1 proceeded at the assumption that delayed deposits itself invite damages. The Respondent Authority has not used its discretion according to law and had assessed the amount mechanically.

In its counter to the Appeal, the Respondent Authority has taken a case that, the Appellant Establishment is covered under the Act and is under obligation under the Act and liable to deposit PF dues of its employees by the 15th of the next month, in which the employee has worked with them and has earned his wages. Failure to deposit dues will invite recovery proceedings, including recovery of interest and penal damages under Section 7Q and 14B of the Act. There is no provision of appeal under the Act with respect to order under Section 7Q of the Act because it is a consequential order. The Act is a beneficial legislation, hence any of its provision capable of two interpretations, the interpretation favoring beneficiary will be accepted.

In the case in hand, the Appellant Establishment failed to remit statutory dues within stipulated time for the period

03/2009 to 12/2013, later extended from 08/2004 to 12/2013 on verification of record and proceeding for recovery of penal damages and interest were initiated. The impugned findings and assessment has been passed after granting full opportunity to the Appellant Establishment, hence did not warrant any interference as they cannot be faulted with on facts and law.

No counter has been filed by the Respondent No.2.

I have heard argument of Learned Counsel for the Appellant Establishment Mr. Pranay Choubey and Mr. Harshit Patel, Learned Counsel for Respondent Authority. None appeared for Respondent No.2, i.e. the Principal EmployerNational Rural Health Mission.

On perusal of record in the light of rival arguments, following issues comes up for determination –

1. ***Whether the appeal is maintainable with respect to impugned findings and assessment under Section 7Q of the Act?***
2. ***Whether the findings of the Respondent Authority that the Appellant Establishment has defaulted in timely deposit of PF of its employees for the period 08/2004 to 12/2013 and is then liable to pay Rs. 3,06,908 as penal damages under Section 14B of the Act has been recorded correctly in law?***

<u>Point for determination No.1-</u>

Section 7Q of the Act is being reproduced as follows –

<u>7Q. Interest payable by the employer</u>.—

The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment: Provided that higher rate of interest specified

in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

The Act does not provide any appeal against order under Section 7Q. The order under Section 7Q is a consequential order under Section 7(A) of the Act, which determines the responsibility to deposit PF dues till the order under Section 7(A) of the Act is binding on the parties, and consequential order regarding levy of interest for late deposits cannot be challenged.

Hence, accepting the submissions from the side of Respondent Authority that, the appeal is not maintainable so far as it relates to impugned order under Section 7Q of the Act, the appeal against finding and assessment under Section 7Q of the Act is held not maintainable. The Appellant Establishment, however, is at liberty to pursue remedy before proper forum in this respect.

Point for determination No.1 is answered accordingly.

<u>Point for determination No. 2 -</u>

Before proceeding, Section 14B of the Act being required to be referred and is being reproduced as follows –

<u>14B. Power to recover damages.—</u>

Where an employer makes default in the payment of any contribution to the Fund , the Pension Fund or the Insurance Fund or in the transfer of accumulations accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:

Provided that before levying and recovering such damages, the employer shall be given a reasonable reasonable opportunity of being heard.

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.

Learned Counsel for the Respondent has submitted that, in cases of civil liability, *mens rea* loses its significance. He has relied on judgment of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, with connected appeals wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability.

The use of word ***'May'* in section 14B, indicates that damages are not mandatory, rather they are discretionary**. Following judgments require to referred to in this respect, as submitted by Learned Counsel for Appellant Establishment-

Hon'ble Calcutta High Court in ***Murarka Paint & Varnish Works Ltd. Vs. Union of India 1976 Lab IC 1453*** has held as under:

"Though the liability of the employer to the provident fund of employees is statutory, it does not follow that belated payment would always attract imposition of damages. The authority is obliged to find out how the beneficiaries have been affected by the non-payment of contribution to their fund."

Hon'ble Supreme Court in ***ESIC vs. HMT 2008 (1) SCALE 341*** has observed that:

"21. A penal provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations. Such an intention on the part of the legislature is not

decipherable from Section 85-B of the Act. When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavor should be made to construe such penal provisions as discretionary, unless the statute is held to be mandatory in character.

25. The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.

26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damagers and/or the quantum thereof."

Hon'ble Apex Court in ***McLeod Russel India Ltd. Vs. Regional provident Fund Commissioner (2014) 15 SCC 263*** has held as under:

"11. ……………. the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100% of the arrears have been imposed in all the cases. Alternatively stated, if damages have been imposed under Section 14-B it will be only logical that mens rea and/or actus reus was prevailing at the relevant time."

Further, the **Hon'ble Supreme Court in** ***Assistant Provident Fund Commissioner, EPFO & Anr vs. Management of***

RSL Textile India Private Limited (2017) 3 SCC 110 has observed as under:

> ***"following McLeod Russel India Ltd., (2015) 15 SCC 263, since presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under S. 14-B, High Court or appellate authority or original authority having found no mens rea and/or actus reus, respondent(s) could not be held liable under S. 14-B"***

Hon'ble Punjab & Haryana High Court in ***Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal & Anr. (2016) 148 FLR 311,*** dismissing the appeal has held as under:

> ***"5. The learned Single Judge upheld the said order passed by the Appellate Tribunal, while observing that under Section 14B of the Act, the competent authority has a discretion to impose damages which it may think fit keeping in view the facts and circumstances of a case. It has been observed that before imposing damages, the competent authority is required to see whether a default is justified or intentional in the given set of circumstance or not. The learned Single Judge has observed that in the present case, the Appellate Tribunal has rightly come to the conclusion that the competent authority without considering the facts and circumstances of the case wrongly exercised its discretion and imposed damages under Section 14B of the Act. The said order passed by the Appellate Authority has been found to be legal and the learned Single Judge has come to the conclusion that there is no ground to interfere in the discretion exercised by the Appellate Tribunal"***

Hon'ble High Court of Chhattisgarh **in *M/s Mohanti English Medium School vs. Employee Provident Fund & anr. 2019 (161) FLR 289 (Chhti)*** has held as under:

"9. Very recently, the Supreme Court in the matter of Assistant Provident Fund Commissioner, EPFO and another vs. Management of RSL Textiles India Pvt. Ltd., Thr. Its Director, relying upon the earlier judgment rendered in the matter of Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others has held that imposition of damages without recording the finding of mens rea/actus reus on the part of the employer is unsustainable.

10. Applying the principle of law laid down by the Supreme Court in the above stated judgements to the facts of the present case, it is quite vivid that there is no finding recorded either by the Regional Provident Fund Commissioner or by the Employees Provident Fund Appellate Tribunal with regard to mens rea/actus reus on the part of the employer and as such, in absence of finding with regard to mens rea/actus reus on the part of the employer/petitioner, action under Section 14-B of the Act of 1952 against the petitioner cannot be sustained."

Hon'ble Calcutta High Court in W.P. No. 8527 (W) of 2015 ***Tirrihannah Company Ltd. Vs Reginal Provident Fund Commissioner decided on 3107.2018*** *has held as under:*

"In HMT Ltd. (supra) Supreme Court declared, conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative. Existence of mens rea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and quantum thereof.

In view of law declared in HMT (supra), which come after Dalgaon (supra) this Court finds no application of the view that liability under section 14B accrues immediately on default for there to be subsequent or late quantification. Impugned order having omitted to provide illumination regarding why it was thought fit to exercise discretion to impose penal damages,

corresponding to omission to record opportunity given regarding a defence against imposition of penal damages or mitigation, makes it an order which violates of principles of natural justice. As such impugned order is set aside. The Authority will give opportunity to the establishment, hear out its contention regarding imposition of penal damages or mitigation and make appropriate order."

Thus, ongoing through the principle laid down by the Hon'ble High Courts and Hon'ble Supreme Court in the case laws, cited hereinabove, it is very much clear that for conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative; moreover, existence of 'mens rea' to contravene a statutory provision has also been held to be a necessary ingredient for levy of damages and quantum thereof.

The point still remains that *mens rea* may not have any role in holding the defaulter liable for its civil liability but when there is a discretion as mentioned under section 14-B of the Act, with regards to imposing penal damages, the Respondent Authority and this Tribunal in appellate jurisdiction, are fully within its powers to consider the mitigating and aggravating the circumstances in computing the amount of damages. My this view is supported by judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., MANU/CG/0583/2022, para 19*** which is being reproduced as follows-

> ***19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved, reason for delay remittance of provident fund contribution, which are paramount duty of the authority while***

imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."

Another judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

> ***"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-***
>
> > ***"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :***
> >
> > ***(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of***

damages under Section 14-B of the Act without an element of mens rea ?

(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?

(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has been authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of sizeable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is

quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court holds <u>that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-</u>

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels

the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other

resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum. It is stated that S.L.P.(Civil) No.25548 of 2024, is said to be pending before the Hon'ble Supreme Court of India.

Furthermore, Learned Counsel for the Appellant Establishment has referred to judgment of the judgment in the case of ***Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited bearing W.P. No. 14255/2020 decided by the Single Bench of Hon'ble High Court of Madrass***. Judgment of ***Hon'ble High Court of Calcutta in W.P.A. No. 1945/2025, Regional***

Provident Fund Commissioner v/s Registrar, Central Government Industrial Tribunal, Kolkata & anr., and judgment of ***Hon'ble High Court of Chhattisgarh at Bilaspur in the case of Regional Provident Fund Commissioner v/s Bilaspur Spinning Mills & Industries Ltd. & anr., 2022 SCC Online Chh 635***. These judgments also support the same proposition of law as mentioned above.

Now coming on the facts of the case in hand, in the light of the aforesaid proposition of law, it is established from the material on record that plea of delayed payment of bills raised by the Appellant Establishment by the Principal Employeri.e. National Rural Health Mission to whom the Appellant Establishment had supplied security services was raised before the Respondent Authority. Since, the Appellant Establishment is outsourcing agency, it supplies manpower to different organizations and gets paid for it. It pays wages to its employees from the payments received by it at different principal employers, this factor requires to be taken into consideration while determining the penal damages.

The Respondent Authority has observed in the impugned order that the Appellant Establishment had prayed that Principal Employer also be issued notice in the enquiry but he decided not to issue notice to the Principal Employer on the ground that the Appellant establishment had been allotted separate PF code and the Appellant Establishment and Principal employers are jointly and severally liable to pay penal damages. He further observed that the Appellant establishment is at liberty to recover the Penal damages paid by it from the Principal employer. This observation of Respondent Authority is against the proposition of law laid down in the above referred judgments. The Respondent Authority was under obligation in law to consider the factum of delayed payment by the Principal Employer while assessing the amount of Penal damages.

Hence, holding the finding by the Respondent Authority that the Appellant establishment is jointly and severally under obligation to pay penal damages for delayed deposit of PF dues of its employees with the Respondent Authority for the period under the impugned order with the Principal Employer Respondent No.2, having been correctly recorded in law, the assessment portion of the impugned order requires to be reworked by way of reducing the penal damages by 50%. The Respondent Authority shall be within its powers to recover the remaining amount of 50% of damages from the Principal Employer i.e. Respondent No.2.

Point for determination is answered accordingly.

No other point was pressed.

In the light of above discussion and findings, the Appeal is allowed partly as follows.

<u>ORDER</u>

Appeal is allowed partly. The finding of the respondent Authority that Appellant Establishment, being the employer and the principal employers, to whom the Appellant establishment had provided security guard services are jointly and severally liable to pay penal damages for delayed deposit of PF dues of employees of Appellant establishment, is upheld and the amount of damages imposed u/s 14B of the Act in the impugned order is reduced by 50% to which the Appellant Establishment is held liable to deposit. The Respondent Authority will be within its powers to recover the remaining 50% amount from the Principal Employer i.e. the Respondent No.2.

No order as to cost.

Date:- 13/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 13/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)