



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 15849 of 2017

Date of Decision: 04.09.2024

**CENTRAL BOARD OF TRUSTEES, EMPLOYEES PROVIDENT FUND
THROUGH REGIONAL PROVIDENT FUND COMMISSIONER**

....Petitioner

VS.

**M/S HI-TRAC MANPOWER SERVICES PRIVATE LIMITED AND
ANOTHER**

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sandeep Goyal, Advocate for
Mr. Onkar Singh Batalvi, Advocate
for the petitioner

Mr. Kuldedep Sheoran, Advocate
for respondent No. 1

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 30.03.2017 (Annexure P-2) whereby Appellate Authority has modified order dated 27.01.2014/23.01.2015 (Annexure P-1) passed by Assessing Authority.

2. The respondent No. 1 is a registered contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (in short "1970 Act"). He is engaged in supplying labour to various establishments. The Contractor as well as employer are bound to comply with the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short



“1952 Act”). The first liability is upon the contractor and in case contractor fails, liability shifts to principal employer. The contractor during April’2004 to January’2014 delayed payment of employer & employee contribution in the provident fund. The respondent-Assessing Authority issued notice dated 03.04.2014 calling upon the contractor to show cause as to why damages and interest in terms of Sections 14-B and 7Q of the 1952 Act should not be levied. The contractor filed reply wherein he submitted that delay had occurred on account of global slowdown and delayed receipt of monthly charges from principal employer. The delay was not intentional and it was beyond his control. The Assessing Authority did not agree with the submissions of contractor and vide order dated 23.01.2015 assessed damages and interest to the tune of Rs. 54,07,928/-.

2.1 The contractor feeling aggrieved from order dated 23.01.2015 preferred an appeal before Appellate Authority which came up for consideration before Employees Provident Fund Appellate Tribunal on 30.03.2017. The Appellate Tribunal considering submissions of contractor reduced quantum of penalty to 20% of the assessed damages.

3. Mr. Sandeep Goyal, Advocate submits that Appellate Authority has wrongly reduced amount of assessed damages. There was conceded delay on the part of contractor, thus, he was liable to pay damages besides interest.

4. I have heard counsel for the petitioner and perused the paper book with his able assistance.

5. From the perusal of record, it is evident that there is no finding on the part of Assessing Authority that there was intentional delay or there



was *mens rea* on the part of contractor. The Appellate Authority has not reduced amount of interest whereas assessed damages have been reduced. The provisions qua damages are not mandatory provisions. The authorities are bound to assess damages judiciously and considering the prevailing facts and circumstances. The Tribunal has considered that amendment in the provisions with respect to interest and damages was made with effect from 26.09.2008. The period involved in the case in hand is from 2004 to 2014, thus, partial period falls before amendment and partial after amendment. The mode and method of calculation have changed post amendment. The interest is separately calculated with effect from 26.09.2008 whereas prior to amendment, damages and interest were collectively calculated. The Tribunal considering factual and legal position has reduced amount of damages though interest is not disturbed.

6. The Appellate Authority has not disturbed the amount of interest and damages are reduced to 20%. The provisions of damages are not mandatory, thus, it was within jurisdiction of Tribunal to reduce the quantum of damages. The contractor though delayed but without asking of petitioner had deposited provident fund dues. He is liable to pay interest on account of delay. Thus, quantum of damages need to be determined judiciously. The Tribunal has judiciously exercised its power. This Court does not find any jurisdictional error or factual infirmity in the impugned order warranting interference.

7. In view of the above facts and findings, this Court is of the considered opinion that the instant petition sans merit and deserves to be



dismissed and accordingly hereby dismissed.

04.09.2024
paramjit

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	