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Principal Employer is not responsible for PF Contributions of Contract Workers

IF Contractor has Ultimate Control over the Affairs of its Establishment, then Principal Employer is not responsible for Provident Fund Contributions of Contract Workers.
Principal Employer is not responsible for PF Contributions of Contract Workers
>>> When the contractor is an independent legal entity with a large workforce and engaged in providing services to various clients, the onus to make provident fund is not on the principal employer nor will a principal employer be held liable in case of non-compliance.

The employers and its attorneys may like to argue with PF authorities that the establishments/companies are not responsible for PF contributions with respect to contract workers engaged through various contractors.
If the agreements with the contractors are on a principal to principal basis where the contractors retain all control over its personnel and the company has no more than a secondary control, it can help to strengthen the argument.

>>> The widely accepted view is that the principal employers are legally required to make contributions towards the provident fund of workers employed through contractors.

>>> PF Act (Employees Provident Funds and Miscellaneous Provisions Act, 1952: An employee under the PF Act is defined to include persons employed through a contractor in or in connection with the work of the establishment.
Whereas employer is defined as a person having 'ultimate control over the affairs of the establishment'.
PF Act: mandates: the employer to make contributions to the provident fund accounts of each of its employees.
Section 8A of the PF Act allows the principal employer to recover from the contractor, the amount contributed with respect to the contractor's employees. Thus the widely accepted view has been that the principal employers are legally required to make contributions towards the provident fund of workers employed through contractors as well.

>>> The extent definitions and sections, as in the PF Act are:
Employees Provident Funds and Miscellaneous Provisions Act, 1952:
2. Definitions. - In this Act, unless the context otherwise requires, -
(b) “basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either
case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-
(i) the cash value of any food concession;
(ii) any dearness allowance that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living, house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
(iii) any presents made by the employer;
(e) “employer” means- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause f of sub-section 1 of section 7 of the Factories Act, 1948 (63 of 1948), the person so named;
And
(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;
(f) “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,-
(i) employed by or through a contractor in or in connection with the work of the establishment;
6. Contributions and matters which may be provided for in Schemes. – The contribution which shall be paid by the employer to the Fund shall be ten percent. Of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employee,Äús contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section
…….
…….for the time being payable to each of the employees whether employed by him directly or by or through a contractor
8A. Recovery of moneys by employers and contractors.
(1)The amount of contribution that is to say, the employer,Äús contribution as well as the employee, as contribution in pursuance of any Scheme and the employer,Äús contribution in pursuance of the Insurance Scheme and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer

from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.
(2) A contractor from whom the amounts mentioned in sub-section 1 may be recovered in respect of any employee employed by or through him, may recover from such employee the employee,Äüs contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance if any payable to such employee.
(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer,Äüs contribution or the charges referred to in sub-section 1 from the basic wages, dearness allowance, and retaining allowance if any payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

>>> Central Government Act
Article 226 in The Constitution Of India 1949
226. Power of High Courts to issue certain writs
(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
>>> It was held that "contractor contemplated under section 8A is one who is a mere front or headman of the principal employer"
1. This petition under Article 226 of the Constitution takes exception to the petitioner being directed to answer queries vis-a-vis workers employed by respondents Nos. 3 and 4.
2. Petitioner has its factory at Pune and other places in India. It is in the business of manufacture of commercial vehicles and engineering goods. It has a work-force of near about 13,000 employees. The said employees are covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 hereinafter referred to as 'the Act'. In relation to its factory at Pimpri, the conservancy work is attended to by employees of the 3rd respondent. The 4th respondent is said to be a supplier of certain goods required by the petitioner in the manufacture of commercial vehicles. Petitioner's grievance is that respondent No. 2 has been illegally demanding that it supply information in relation to the work-force employed by respondent Nos. 3 and 4. This is despite the fact that these respondents are not its creations and have an independent existence of their own. Petitioner has no supervision or control over the employees engaged by respondent Nos. 3 and 4. The queries addressed to it by the 2nd respondent were uncalled for. Section 7-A of the Act which empowers the 2nd respondent to do various things is ultra vires the Constitution. Hence this petition for a declaration that Section 7-A is ultra vires, that the employees of the 3rd and 4th respondents are covered under separate code numbers for which reason the petitioner cannot be called upon to account for payments made by or on their behalf and a declaration that the 4th respondent is not a contractor.
3. Respondents 3 and 4 support the stand taken by the petitioner and plead that they have independent existence of their own. They were and always had been ready and

willing to give to their employees the benefits available under the Act and also furnish the requisite particulars to the 2nd respondent. It was the 2nd respondent who initially had refused to give the 3rd respondent a separate code.
4. Even after this separate code number was given, the 2nd respondent persisted with queries being addressed to the petitioners in respect of the employees of the 3rd respondent.
5. Counsel for the petitioner submits that having regard to the material on record, it is clear that respondent No. 3 had an independent existence of its own. It was a Cooperative Society registered as such under the Maharashtra Cooperative Societies Act and was engaged in business of various types. Not only was the 3rd respondent in the business of supplying manpower to various concerns including the petitioner, but it was also in the business of preparing cushion furniture and cushion articles. A concern could do business in the manufacture and sale of articles and also being in the service business by supplying man power required by different concerns.
6. All that Respondent No. 2 gives out is a misleading impression of Respondent No. 3 being a subservient to the petitioner. The relationship between the two has to be gathered from the circumstances as a whole and not by picking a word here and there. Seen thus, it will be clear that Respondent No. 3 is in the business of supplying manpower to different establishments and has an existence of its own. Mr. Master relies upon Section 8-A of the Act which enjoins the employers and the contractors to recover the contribution of the employees and remit the same along with that of theirs. This has no bearing on the subject under consideration for the contractor contemplated by that section is one who is a mere front or headman of the principal employer. ……..
Here, the position that the so-called contractor is an entity by itself. It is anxious to be recognised as such, From the very inception it has been pushing itself to get registration under the Act by soliciting a separate code number.
7……One such purchaser from the 4th respondent is the petitioner. But that would not make the purchaser a principal employer vis-a-vis the employees of the 4th respondent.
Bombay High Court
Tata Engineering And Locomotive ... vs Union Of India (Uoi) And Ors

>>> The findings of this judgment can be useful to argue for the establishments/companies that they are not responsible for PF contributions with respect to contract workers engaged through various contractors.
If the agreements with the contractors are on a principal to principal basis where the contractors retain all control over its personnel and the company has no more than a secondary control, it can help to strengthen the argument.
The Delhi Court Court relied on the definition of employer under section 2(e) of the PF Act that defines employer as a person having 'ultimate control over the affairs of the establishment' and and also took into account the observations of above mentioned judgment “Tata Engineering And Locomotive ... vs Union Of India (Uoi) And Ors, and “observed that:
Since M/s. Group 4 Securitas Guarding Ltd. (M/s. GSGL, for short):
Issues employment contracts to the security guards, pays wages and other allowances to the guards after obtaining their signatures on the register maintained by the

contractor, is responsible to take disciplinary actions against delinquent guards, operates as an independent entity and is engaged in the activity of providing security services to various clients, deputes the guards to the client's establishment on rotation and transfer basis, has control rooms in the client's establishment to supervise and regulate the work of the deputed guards; and has an independent code/registration under the PF Act
Therefore M/s Group 4 Securitas Guarding Ltd will be regarded as the employer as per section 2(e) having ultimate control over its personnel and its own establishment.

>>> 1. Both these writ petitions are being disposed of together as they have arisen out of a common order dated 01.05.2000 passed by Employees Provident Fund Appellate Tribunal (for short „the Tribunal‚Äü).
2. Both the petitioners herein, namely M/s. Group 4 Securitas Guarding Ltd. („M/s. GSGL‚Äü for short) and M/s. Whirlpool of India Ltd. („M/s. Whirlpool‚Äü for short) had challenged order dated 31.05.1999/02.07.1999 & 31.05.1999/22.06.1999 respectively passed against them by the Respondent No. 2 herein, namely, Regional Provident Fund Commissioner, Faridabad (Haryana) under Section 7A of the Employees Provident Fund & M.P. Act, 1952 (for short „the Act). In both the cases, the Commissioner directed the petitioners to pay additional provident fund contributions on the amount shown as HRA, conveyance allowance and washing allowance. The Tribunal vide the impugned order dismissed the appeals of the petitioners holding that M/s. GSGL was supplying security personnel to one M/s. Havels (I) Ltd. as a contractor and that all these personnel were the employees of the establishment where they were deputed. It was held that since the employees were employed by M/s. GSGL for the principal employer, hence, the principal employer/establishment where the personnel were deputed was liable to pay PF contributions of those employees. Based on this premise, the Tribunal dismissed the appeals of the petitioners. The petitioners have assailed the impugned order of the Tribunal.
2. There is no dispute to the fact that M/s GSGL is an independent legal entity and operates all over the world having workforce of large number of employees and engaged in the business of providing „security guard services‚Äü to various establishments all over India. M/s. Whirlpool Ltd. and M/s. Havels (I) Ltd. are some of its clients. It is also not in dispute that M/s. GSGL is independently covered under the provisions of EPF Act by virtue of notification under section 1(3) (b) of the Act which extends provisions of the said Act to establishments engaged in the business of providing "security guard services" and that it has been granted a code number by the authority under the Act. It is also not in dispute that PF department has been accepting contributions from M/s. GSGL treating it as the "employer" in respect of the said employees.
3. The commissioner initiated proceedings under Section 7A of the Act against the petitioners on the ground that M/s GSGL had allegedly violated compliance under the said Act by not depositing PF contributions on the additional component of HRA, conveyance allowance and washing allowance as paid by it to its employees who were employed by its clients namely M/s Whirlpool and M/s Havels (I) Ltd.
The first question that arises for consideration in the present writ petitions is as to whether the security guards/personnel provided by M/s GSGL to its clients M/s.

Whirlpool and others would be its employees or that these personnel would be the employees of the establishment to whom they are provided. In other words the question would be as to whether it is M/s GSGL who is the employer of those personnel or it would be the clients of M/s GSGL to whom such personnel are provided. The other question would be as to whether there was any additional liability payable in respect of those personnel by their employer.

4. The contention of the petitioners is that it is M/s GSGL alone who is the employer in relation to those personnel who were employed by it in various establishments. I am in full agreement with the submission of learned counsel for the petitioners in this regard. There is no dispute that M/s GSGL is engaged in the activities of providing "security guard services" which is recognized under the Act as primary activity and not as an agency.

It is not disputed that M/s GSGL is an establishment with large number of employees and is directly covered by the provisions of the Act.

It has been allotted a PF code number for direct compliance of the provisions of the Act. There is no dispute that such code number is allotted to the employers and not to the contractors.

M/s GSGL clearly falls within the meaning of Section 2(e) of the said Act in respect of its personnel deputed at various establishments and factories.

It is stated that M/s GSGL was submitting statutory returns and contributions in respect of such employees to the competent authority directly as employer.

Section 2(e) (ii) of the Act defines employer in relation of any other establishments, the person who, or the authority which, has the ultimate control over the affairs of the establishment.

It could not be said that the clients like M/s. Whirlpool and others have any control over the affairs of M/s GSGL. On the other hand M/s GSGL has control over its employees and the establishment.

The said security personnel/guards not only received their appointment letters, but also wages and allowances from M/s GSGL after signing the registers maintained by M/s GSGL and were governed by the terms and conditions of their services withM/s GSGL. The clients of M/s GSGL have no control in the fixation of terms and conditions of the service of security guards.

The security personnel are deputed by M/s GSGL in the establishment of their clients not permanently, but, on rotation and transfer basis depending upon the requirement and exigency of the services related to its clients. The clients have no disciplinary control over those personnel.

The submissions of the learned counsel for the petitioners that in some cases M/s GSGL maintains control rooms in the client‚Äüs establishment to supervise and regulate the working of the security guards/personnel deputed there and that besides security guards

M/s GSGL also deputes other staff at their clients establishment who take care and regulate the working of the security personnel, was not extroverted. From all these it could be seen that the personnel provided by GSGL to its clients including M/s Whirlpool and others were not provided as a contractor, but on principal to principal basis. Thus the clients cannot be termed as the principal employer of those security guards provided by M/s GSGL.

11. In view of the above discussion, the impugned order of the Tribunal is held to be contrary to law and are thus quashed.
12. The Writ Petitions are allowed.
Delhi High Court
Group 4 Securitas Guarding Ltd. vs Employees Provident Fund