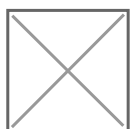


## **ESI Act | Person In Supervisory Role Liable For Non-Remittance Of Contributions Regardless Of Designation : Supreme Court**



The Supreme Court noted that an individual, regardless of his official status, can be considered a 'principal employer' under the Employees' State Insurance Act, 1948 ("ESI Act"), if he is an agent of the owner or occupier of a factory, or if he controls and supervises the said establishment.

Keeping thus, the bench of Justices Sudhanshu Dhulia and Ahsanuddin Amanullah confirmed the conviction of the General Manager of a company, who was charged with failure to pay the Employees' State Insurance contribution to ESIC. He was directed to serve imprisonment for six months and also a fine of Rs.5000/-

The Appellant protested his conviction by stating that he did not hold the position of General Manager or was he the 'Principal Employer' in the period when the alleged default was committed. He pressed for it being the responsibility of the Company to pay to the ESIC, thus, he could not be prosecuted for default in the remittance of the employees' ESI contribution.

Refuting such an argument, the judgment written by Justice Amanullah noted that the designation of the individual is immaterial when the individual exercises supervision/control.

the Appellant, who was the General Manager in the company, could not refute his position, he cannot be excused from the liability under the ESI Act for non-remittances of employees' contribution to ESI, the court stated.

The Court held the Appellant to be such 'principal employer' of the company as defined in Section 2(17) of the ESI Act, laying down the definition of 'principal employer'. The Court held that he fell within the definition of "managing agent" according to S.2(17)

Hence, designation of an individual can be irrelevant if such individual otherwise is an agent of the Owner/Occupier or manages and controls the said establishment. From the documents available on file, we observe that the Appellant comes within the scope of Section 2(17) of the Act, being a 'managing agent"', the Court observed.

Hence, we have the conviction and the sentence and no interference there is required, much less in the case in hand, wherein although deductions for contributions were made from the employees' salaries, they were not credited with the ESIC." the court observed.

Consequently, the appeal is dismissed.