IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

Ins.APP.No. 81 of 2012

IC 16/2005 OF EMPLOYEES' INSURANCE COURT, KOLLAM.
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APPELLANT/APPLICANT:

M/S. MUTHOOT MOTORS PVT. LIMITED,
MUTHOOR SHOPPING ARCADE, ULLOOR,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR. THOMAS MUTHOOT.

BY ADV. SRI.C.M.STEPHEN

RESPONDENTS/OPPOSITE PARTIES:
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1. THE REGIONAL DIRECTOR,
ESI CORPORATION, PANCHADWEEP BHAVAN,
NORTH SWARAJ ROUND, THRISSUR-680020.

2. SANALKUMAR P.S.,
S/O. SUDARSANAN NAIR P., T.C.21/1705(2),
PADINJATTU VEEDU, NEDUMCAUD,
KARAMANA P.O., THIRUVANANTHAPURAM-695002.

R1 BY ADV. SRI.P.SANKARANKUTTY NAIR, SC

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

Ins.APP.No. 81 of 2012

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1:	TRUE COPY OF THE APPLICATION FILED BY THE APPELLANT BEFORE THE EI COURT, KOLLAM, UNDER SECTION 75, 76 AND 77 OF THE ESI ACT, DATED THE 19TH OF APRIL, 2005.
ANNEXURE A2:	TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE LEARNED FIRST RESPONDENT BEFORE THE COURT BELOW, DATED NIL OF MARCH, 2006.
ANNEXURE A3:	TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE ADDITIONAL SECOND RESPONDENT BEFORE THE COURT BELOW, DATED THE 11TH OF MAY, 2010.
ANNEXURE A4:	TRUE COPY OF THE PROOF AFFIDAVIT FILED BY AW1 BEFORE THE COURT BELOW, DATED THE 14TH OF JUNE, 2011.
ANNEXURE A5:	TRUE COPY OF THE HALF YEARLY RETURNS FILED BY THE APPELLANT BEFORE THE RESPONDENT(EXHIBIT A2 BEFORE THE COURT BELOW)
ANNEXURE A6:	TRUE COPY OF THE C-18 NOTICE DATED 6.12.2004 (EXHIBIT A3 BEFORE THE COURT BELOW)
ANNEXURE A7:	TRUE COPY OF THE LETTER OF THE APPELLANT DATED 18.3.2005 (EXHIBIT A4 BEFORE THE COURT BELOW).
ANNEXURE A8:	TRUE COPY OF THE INSPECTION REPORT DATED 28.10.2004, ALLEGEDLY PREPARED BY THE INSPECTOR UNDER SECTION 45 (EXHIBIT B1 BEFORE THE COURT BELOW).
ANNEXURE A9:	TRUE COPY OF THE OBSERVATION SLIP DATED 28.10.2004 ALLEGEDLY PREPARED BY THE INSPECTOR (EXHIBIT B2 BEFORE THE COURT BELOW).

RESPONDENT'S ANNEXURES: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.B. SURESH KUMAR, J.

Insurance Appeal No.81 of 2012

Dated this the 3rd day of February 2015

<u>J U D G M E N T</u>

The decision of the Employees Insurance Court, Kollam in I.C. No.16 of 2005 is under challenge in this appeal. The applicant in the proceedings is the appellant.

2. The applicant is an establishment covered under the Employees State Insurance Act, (for short, the Act). On verification of the records of the applicant, an Inspector of the Employees State Insurance Corporation (for short, the Corporation) has reported to the Corporation that for the period 2002-2003 and 2003-2004, the applicant had omitted to pay contribution in respect of certain wages. Based on the said report, proceedings under Section 45A of the Act was initiated against the applicant. Though the applicant was issued notice in the proceedings, they did not appear in the proceedings. Consequently, an order was passed by the Corporation determining the contribution payable by the

applicant in respect of the omitted wages. The application before the Insurance Court was filed, in the circumstances, seeking a declaration that the determination of the contribution payable by them is illegal. The case set up in the application is that the Inspector of the Corporation who had reported short remittance of the contribution had inspected the premises without prior intimation and that the order under Section 45A of the Act was passed without affording them an opportunity of hearing.

3. The Insurance Court, on an appraisal of the materials on record, found that the applicant has not made out a case for interference and accordingly, dismissed the application. It is aggrieved by the said decision of the Insurance Court, the applicant has come up in this appeal.

4. Ext.B1 is the inspection report prepared by the Inspector who verified the records of the applicant and reported the omitted wages to the Corporation.

Ext.B2 is the observation slip prepared by the Inspector. Ext.B2 indicates that a copy of the same has been served on the applicant and the applicant had acknowledged the receipt of the same on 28.10.2004 itself. Ext.B2(a) is the ledger verification report prepared by the Inspector. The applicant has acknowledged the receipt of Exts.B2(a) report also. Ext.A3 is the notice issued by the Corporation to the applicant in connection with the proceedings initiated under Section 45A of the Act. Ext.A3(a) is the acknowledgment of the applicant evidencing receipt of Ext.A3 notice. Ext.B3 is the order passed by the Corporation under Section 45A of the Act.

5. The Insurance Court noticed that the applicant had received Ext.A3 and Exts.B1 to B3 on time. The Insurance Court also noticed that no explanation whatsoever is offered by the applicant for not appearing before the Corporation on receipt of Ext.A3 notice. The Insurance Court found that the Corporation had issued the order under Section 45A of the Act after complying

with the principles of natural justice.

In the light of the said findings of the Insurance Court, I do not find any ground to interfere with the decision of the Insurance Court and the appeal is accordingly dismissed.

Sd/-

P.B. SURESH KUMAR
JUDGE

NS

/True Copy/

P.A to Judge