IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Ins.APP.No. 20 of 2013 ()

IC 69/2008 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

APPELLANT/APPLICANT:

SREE NARAYANA SALES & SERVICE
KOONAMTHAI, EDAPPALLY, PALLURUTHY
KOCHI, REPRESENTED BY N.MOHANAN, MANAGING PARTNER.

BY ADVS.SRI.T.S.RADHAKRISHNA PILLAI
SRI.T.P.RAJENDRAN NAIR

RESPONDENT

REGIONAL DIRECTOR,
E.S.I.CORPORATION, THRISSUR-20.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

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Insurance Appeal No.20 of 2013

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Dated 24th February, 2015.

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

The first applicant in I.C.No.69 of 2008 on the file of the Employees' Insurance Court, Alappuzha has come up in this appeal challenging the decision of the Insurance Court in the said case.

2. The first applicant is running a petroleum outlet in partnership with his children. In the premises of the petroleum outlet of the firm, the second applicant, the wife of the first applicant is running an automatic weigh bridge. According to the applicants, the said establishments are functioning in separate buildings with separate set of employees and there is nothing in common between the two establishments. Nevertheless, it is stated that the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation' for short) treated the establishments as one unit and brought them under the coverage of the Employees' State Insurance Act (hereinafter referred to as 'the Act' for short), with effect from 18.5.2007. The proceedings referred to above is instituted, in the circumstances, seeking a declaration that

the decision of the Corporation in clubbing the establishments of the applicants for the purpose of coverage under the Act is illegal and unsustainable.

3. The respondent contested the proceedings contending inter alia that the establishments are situated in the very same compound, they have a common entrance and exit, common workers, common power connection and therefore, they are liable to be treated as one unit for the purpose of coverage under the Act.

4. The Insurance Court, on an evaluation of the materials on record, found that the decision of the Corporation to club the establishments as one unit for the purpose of coverage was proper. The Insurance Court, however, found that the applicants could not effectively defend the assessment proceedings under Section 45A of the Act and consequently, directed the Corporation to complete the assessment of the contributions afresh, after affording the applicants an opportunity of hearing. The first applicant is aggrieved by the said decision of the Insurance Court and hence this appeal.

5. Heard the learned counsel for the appellant and

the learned counsel for the respondent.

6. The Act does not provide the circumstances under which the establishments can be clubbed together for the purpose of coverage under the Act. However, in **Madona Textiles v. E.S.I. Corporation** (2000 (2) KLT 741), this Court, relying on the decision of the Apex Court in **ACC Ltd. v. Workmen** (1960(1) LLJ 1960) and the decision of this Court in **Eddy Current Controls (India) Ltd. v. Regional Provident Fund Commissioner** (1993(2) KLT 573), held that the tests to be applied to decide the issue as to whether two units are liable to be clubbed together for the purpose of coverage are the geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrity, general unity of purpose and the like. It was also held in the said case that the purpose of the tests is to find out the true relationship between the two units and the tests shall be applied keeping in mind the object of the statute. In the instant case, on a meticulous analysis of the facts, the Insurance Court found that PW1 and his sons are the partners of the firm running the Petroleum outlet; that the deed of partnership of the firm provides that the partnership is running

a weigh bridge; that both the units are situated in a single compound; that the entry and exit for both the units are one and the same; that the electric connection to both the units are common; that the employees engaged for work in the establishments are common; that only one employee is engaged in the weigh bridge, whereas the names of eight employees are shown in the muster roll and wages register maintained in the weigh bridge and that the partners of the firm are looking after the affairs of the weigh bridge. The Insurance Court also found that the second applicant who claims that she is the proprietor of the weigh bridge has not adduced any evidence, oral or documentary, to substantiate her contention that she has no connection whatsoever with the first applicant. The findings of the Insurance Court as referred to above, show that there is geographical unity, functional integrity and unity of management in respect of the establishments.

7. The learned counsel for the appellant, relying on the decision of the Bombay High Court in **Gujarat Sweet Mart** v. **Regional Director, E.S.I. Corporation, Goa and another** [2014(141) FLR 420], contended that the most important test

to be applied in the matter of considering the question as to whether the clubbing of two establishments is proper or not is to ascertain whether on closure of one establishment, the other establishment also gets closed and that if the said test is applied, it can be seen that the decision of the Corporation is unsustainable as the establishments in the instant case would survive independently. There is no merit in this argument as it is clarified in the said judgment itself that any one of the several tests cannot be said to be absolute in each case and that it cannot be said that in each case, the test whether on closure of one establishment, the other establishment also gets closed is the most important and dominant test. Paragraph 25 of the said judgment reads thus :

> "Thus unity of ownership, unity of management, supervision and control, unity of finance, unity of labour and unity of employment, interchangeability of employees, unity of location, general unity of purpose, and functional integrality, etc. are some of the tests which are to be considered for deciding whether the units form part of the same establishment or not. Similarly, whether on closure of one establishment, the other establishment also gets closed, is one of the tests for determining the said question. Any one test cannot be said to be absolute, in each case. It cannot be said that in each case the test whether on closure of one establishment, the other establishment also gets closed is the most important and dominant test. In one case some tests may be important

whereas in the other case some other tests may be important and dominant.”

In the circumstances, there is no merit in the appeal and the same is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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