IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Ins.APP.No. 53 of 2013 ()

IC 140/2012 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

APPELLANT/RESPONDENT:

THE REGIONAL DIRECTOR, SUB REGIONAL OFFICE,
ESI CORPORATION,MALU'S COMPLEX,
ST.FRANCIS CHURCH ROAD,KALOOR,KOCHI 17

BY ADV. SRI.K.SANDESH RAJA

RESPONDENT/APPLICANT:

M/S. ASSYST INTERNATIONAL PVT. LTD.
MUTTAM, THAIKKATTUKARA P.O, ALUVA
ERNAKULAM 683 106 REPRESENTED BY
ITS CHIEF OPERATING OFFICER MR.A.UMESH

R1 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1 BY ADV. SRI.P.GOPINATH
R1 BY ADV. SRI.P.BENNY THOMAS
R1 BY ADV. SRI.K.JOHN MATHAI

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Ins.Appeal No.53 of 2013

Dated 23rd February, 2015.

J U D G M E N T

The decision in I.C. No.140 of 2012 on the file of the Employees' Insurance Court, Alappuzha is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation' for short) is the appellant.

2. The respondent is an establishment covered by the Employees' State Insurance Act (hereinafter referred to as 'the Act' for short). They have not paid contributions in respect of the wages paid to certain trainees for the period from April, 2005 to March, 2008. On detecting the omission, the respondent was called upon to pay the contributions in respect of the omitted wages, after determining the same in accordance with the provisions contained in Section 45A of the Act. The order under Section 45A of the Act was issued on 29.4.2011. Thereupon, the respondent remitted the contributions. Thereafter, the respondent was called upon to pay interest for the delayed payment of contributions. The interest for the delayed payment of contributions was remitted

by the respondent on 19.12.2012. Proceedings for imposition of damage was initiated thereafter for non-payment of the aforesaid contributions on time under Section 85B of the Act. After affording an opportunity of hearing, the respondent was directed to pay 60% of the contributions as damages. The said decision of the Corporation in imposing damages was challenged by the respondent before the Insurance Court. The Insurance Court, on an evaluation of the facts and circumstances, found that imposition of damages on the respondent is unsustainable. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

4. It is beyond dispute that the omitted wages detected by the Corporation is the wages paid to the trainees in the establishment. It is also beyond dispute that when the respondent was called upon to pay contributions in respect of the said wages, they have contended before the Corporation that they are not liable to pay the contributions in respect of the said wages. However, when the Corporation refused to accept the said contention, the respondent paid contributions in respect of the disputed wages without agitating the issue further. Later, when proceedings were initiated for recovery of

interest for delayed payment of contributions also, the respondent remitted the interest without raising any objection. The contention of the respondent that there was a bonafide doubt as to whether they are liable to pay contributions in respect of the wages paid to the trainees, has to be appreciated in the said background. In the facts and circumstances of this case, I am of the view that the Corporation cannot be found fault with for having initiated steps for imposing damages on the respondent. At the same time, imposition of damages to the tune of 60% of the contributions is unjustified. According to me, 25% of the contributions would have been the appropriate damages.

In the result, the impugned order is set aside and the order imposing damages on the respondent is restored, but limiting the quantum to 25% of the contributions payable. The appeal is disposed of as above.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)