IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Ins.APP.No. 10 of 2011 ( )

AGAINST THE ORDER IN IC 40/2010 of EMPLOYEES' INSURANCE COURT, PALAKKAD DATED 02-08-2010

APPELLANT/OPPOSITE PARTY:

E.S.I.CORPORATION, REPRESENTED BY ITS
REGIONAL DIRECTOR, NORTH SWARAJ ROUND, THRISSUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT/APPLICANT:

M/S.AGREENCO FIBER FOAM (P) LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR
SHRI P.V.RAGHAVAN, BALIAPATAM, KANNUR-670010.

BY ADV. SRI.P.M.PAREETH
BY ADV. SRI.MOHAMMED SHAMEEL

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

P.B.SURESH KUMAR, J.

Ins.App. No.10 of 2011
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Dated this the 11th day of February, 2015

JUDGMENT

The decision in I.C. No.40/2010 on the file of the Employees' Insurance Court, Palakkad is under challenge in this Appeal. The Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation' for short) is the appellant.

2. The respondent is an establishment covered under the Employees' State Insurance Act (hereinafter referred to as 'the Act' for short). They have not paid the contributions payable in respect of their employees for the period from April 2004 to September 2004 on time. The Corporation, in the circumstances, had to initiate proceedings against them for recovery of the contributions payable for the said period. Later, on payment of the contributions, the Corporation initiated proceedings for imposition of damage for non-

payment of contributions on time as provided for under Section 85-B of the Act. Notice was issued to the respondent directing them to show-cause why damage to the tune of Rs.61,176/- shall not be imposed on them. The respondent did not appear before the designated authority of the Corporation. Instead, they preferred a reply to the Regional Director of the Corporation who issued notice to them for imposing damage. It seems that the stand taken in the reply was that non-payment of contributions on time was due to financial difficulties. The designated authority of the Corporation found that the respondent had collected the contributions from the employees concerned and therefore, the omission to pay the same was wilful and consequently, imposed damage on them. Aggrieved by the said order, the respondent filed I.C. No.69/2009 before the Insurance Court, Palakkad. The Insurance Court, as per order dated 22.12.2008, set aside the order imposing damage. The appellant challenged the said order in Insurance Appeal No.16/2009 before this Court and this

Court as per judgment dated 14.01.2010, set aside the order of the Insurance Court and remitted the matter for fresh disposal, after holding that the finding of the Insurance Court that the respondent is not guilty of any blatant defiance of law or contumacious conduct is not supported by any materials on record. Pursuant to the judgment in Insurance Appeal No.16/2009, the case was re-numbered as IC No.40/2010 and parties were given yet another opportunity to adduce evidence. Thereafter, the respondent adduced evidence by examining its Manager as AW-1. Two additional documents were also produced. AW-1 has deposed before court that the respondent was facing acute financial constraints during the relevant period and they have not even paid the telephone bill, electricity bill, etc. during the said period. It was also deposed by him that since they could not pay the sales tax and other statutory dues, they were facing coercive action at the instance of the statutory authorities as well. It was further deposed that the employees could not even be paid their salary during the relevant period. Though in the course of cross examination, it was suggested to AW-1 that the respondent had deducted the contributions from the salary of the employees during the relevant period, he denied the suggestion. The Corporation has not adduced any oral evidence. The documents produced by them are seen marked. The documents produced by the Corporation do not indicate that during the relevant period, namely April 2004 to September 2004, the Company had deducted the contributions from the salary of the employees. The evidence tendered by AW-1 that the Company was facing acute financial constraints during the relevant period is not seen seriously challenged in cross-examination. In the said circumstances, the Insurance Court found that the Company was facing acute financial constraints during the relevant period and the failure to pay contributions on time was not wilful and consequently, allowed the application as per the impugned order holding that the order imposing damage is unsustainable.

In the light of the materials on record as referred to above and the factual findings arrived at by the Insurance Court, I do not find any reason to interfere with the impugned decision. There is no question of law, much less any substantial question of law arises for consideration. The appeal is accordingly, dismissed.

SD/-

P.B. SURESH KUMAR,

JUDGE

JV