IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

Ins.APP.No. 28 of 2011 (T)

AGAINST THE ORDER IN IC.NO. 51/2007 OF EMPLOYEES' INSURANCE COURT, ALAPPUZHA DATED 07-05-2010

APPELLANTS/RESPONDENTS :
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1. **THE DEPUTY DIRECTOR,**
   E.S.I. CORPORATION, PANCHADEEP BHAVAN,
   N.S.ROUND, THRISSUR-20.

2. **RECOVERY OFFICER,**
   E.S.I. CORPORATION, PANCHADEEP BHAVAN,
   N.S.ROUND, THRISSUR-20.

   BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENT/APPLICANT :

TRACO CABLE COMPANY LIMITED,
XXVII/1242, KSHB OFFICE COMPLEX, PANAMPALLY NAGAR
P.B.NO.4269, COCHIN-682036
REPRESENTED BY ITS DEPUTY GENERAL MANAGER (WORKS).

BY ADVS. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

Ins.Appeal.No.28 of 2011

Dated this the 22nd day of July, 2015

JUDGMENT

This appeal is preferred against the decision in I.C No.51 of 2007 on the file of the Employees' Insurance Court, Alappuzha. The Deputy Director of the Employees' State Insurance Corporation ('the Corporation' for short) and its Recovery Officer are the appellants.

2. The respondent is an establishment covered under the Employees State Insurance Act ('the Act' for short). The Area Inspector of the Corporation conducted an inspection in the establishment of the respondent on 28.5.1997 and submitted a report to the Corporation stating that the respondent failed to take into account a few wages for payment of contribution under the Act. The omitted wages were shown by the Area Inspector under two heads. As far as the omitted wages shown under the first head are

concerned, the Area Inspector himself assessed the contributions payable by the respondent under the Act at Rs.3,488/-. However, as regards the omitted wages shown under the second head, the Area Inspector recommended to the Corporation to collect segregated figures of the wages and then complete the assessment. Based on the report, an order of assessment was made by the competent authority under the Corporation under Section 45A of the Act on 3.3.2005, as per Ext.P1 order. The respondent challenged Ext.P1 order before the Insurance Court mainly on the ground that though the alleged omitted wages were detected on 28.5.1997, proceedings were initiated for assessment only after several years. According to the respondent, by this time, the relevant records were irrecoverably lost and therefore, they are not able to effectively defend the proceedings initiated against them. According to the respondent, serious prejudice has been caused to them, on account of the failure on the part of the

Corporation in finalizing the assessment within a reasonable time. The Corporation contested the petition, contending mainly that since proceedings were pending, the respondent ought to have preserved the documents until final orders were passed. According to them, the delay, in the circumstances may not be attributed as a reason to challenge the order passed under Section 45A of the Act.

3. The Employees Insurance Court found that as far as the wages included in the first head are concerned, there is no scope for any further scrutiny and therefore, the respondent cannot dispute the assessment made by the Corporation. As far as the wages included in the second head are concerned, the Insurance Court took the view that since there was inordinate delay on the part of the Corporation in finalising the assessment proceedings, the respondent cannot be faulted for having not preserved the documents and consequently, directed the Corporation to revise the assessment reckoning 30% of the omitted wages

shown under the said head as wages assessable under the Act. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

4. Heard the learned counsel for the appellants as well as the learned counsel for the respondent.

5. As noticed above, the Insurance Court has not interfered with the assessment made by the Corporation in respect of the omitted wages shown under the first head. As far as the wages shown under the second head are concerned, there is no dispute to the fact that for completing the assessment as recommended by the Area Inspector, the records of the respondent are to be scrutinized. It is beyond dispute that though proceedings were initiated for assessment of the omitted wages based on the report of the Area Inspector of the Corporation during the year 1997, the same was finalized only after about eight years, during 2005. It is in the said circumstances, the Insurance Court took the view that the

said delay on the part of the Corporation, if ignored, would cause prejudice to the respondent and consequently, directed assessment reckoning 30% of the omitted wages as wages assessable. Such a direction is seen issued having regard to the facts and circumstances of the case. I do not find any illegality in the said order. The Insurance Court has certainly the power to issue such orders. The appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

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