IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

Ins.APP.No. 39 of 2011 ( )

(AGAINST THE ORDER/JUDGMENT IN IC 81/2009 of EMPLOYEES INSURANCE COURT, ALAPPUZHA, DATED 14-10-2010)

APPELLANT/RESPONDENT:-

THE DEPUTY DIRECTOR,
EMPLOYEES' STATE INSURANCE CORPORATION,
SUB REGIONAL OFFICE,
MALU'S COMPLEX,
ST.FRANCIS CHURCH ROAD,
KALOOR, ERNAKULAM.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT/APPLICANT:-

ERNAKULAM REGIONAL CO-OPERATIVE MILK
PRODUCERS UNION LTD.,
(ERCMPU LTD. - MILMA)
ERNAKULAM DIARY,
THRIPUNITHURA - 682 301,
REPRESENTED BY ITS GENERAL MANAGER.

BY ADV. SRI.B.S.KRISHNAN(SR.), SC, MILMA
BY ADV. SRI.K.ANAND (A.201)
BY ADV. SMT.LATHA KRISHNAN

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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Insurance Appeal No.39 of 2011.
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Dated this the 14th day of January, 2015.

JUDGMENT

The order on I.C.No.81 of 2009 on the file of the Employees' Insurance Court, Alappuzha is under challenge in this appeal. The Employees' State Insurance Corporation, hereinafter referred to as 'the Corporation', is the appellant.

2. The respondent moved the Employees' Insurance Court, seeking a declaration that the notice issued by the Corporation, claiming a sum of Rs.20,437/- by way of interest for the delayed payment of contributions for the period from 1.4.1983 to 30.9.1988, is unsustainable. It is stated in the petition filed before the Employees' Insurance Court that the Corporation had raised a demand against them in respect of a few canteen employees and security personnel, as per notice dated 30.11.1986 and the said demand was challenged by them in I.C.No.28 of 1990 before

the Employees' Insurance Court and that as per the order passed on the said petition, the Employees' Insurance Court accepted the challenge against the demand. It is stated that aggrieved by the said decision of the Employees' Insurance Court, the Corporation preferred MFA.No.1221 of 1993 before this Court and this Court remitted the matter to the Employees' Insurance Court for fresh consideration and pursuant to the said decision of this Court, the matter was decided afresh by the Employees' Insurance Court, holding that the respondent is liable to pay contributions in respect of the canteen employees and the security personnel as demanded by the Corporation. It is stated that in compliance of the said order, the respondent had paid the contributions payable by them in respect of the employees referred to above. It is stated by the respondent that the Corporation thereupon raised a further demand for interest for delayed payment of contribution, treating that the contributions in relation to the aforesaid employees fell due during the relevant period namely, from 1.4.1983 to

30.9.1988 itself. According to the respondent, since their liability to pay contribution in respect of the disputed employees was crystallised only by virtue of the decision of the Employees' Insurance Court in I.C.No.28 of 1990 dated 10.8.2007, they can be made liable for payment of interest only thereafter.

3. The Corporation filed a written objection in the proceeding, contending that the time for payment of contribution and the liability to pay interest for delayed payment of contribution have been fixed as per the provisions of the Employees' State Insurance Act, hereinafter referred to as 'the Act' and the Employees' State Insurance (General) Regulations, hereinafter referred to as 'the Regulations' and therefore, in the absence of any provision in the Act and the Regulations, exonerating the employers from the liability to pay interest upto the date of decision of the dispute by the Employees' Insurance Court, in cases where disputes are raised before the Employees' Insurance Court, the employer is liable to pay interest for

the delayed payment of contribution in accordance with the provisions of the Act and the Regulations.

4. The Employees' Insurance Court, accepted the contention raised by the respondent and held that the respondent is liable to pay interest only from 31.8.2007.

5. Section 39(4) of the Act, dealing with the time at which the contribution payable under the Act falls due and Section 39(5) of the Act, dealing with the liability to pay interest for delayed payment of contribution, read thus:

> "39(4). The contribution payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.
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> 39(5). (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I."

Regulation 31 of the Regulations, dealing with the time within which the contributions under the Act are to be paid and Regulation 31A of the Regulations, dealing with the manner in which interest payable for delayed payment of contribution is to be worked out, read thus:

"**31. Time for payment of contribution**:

An employer who is liable to pay contributions in respect of any employee shall pay these contributions within 21 days of the last day of the calendar month in which the contributions fall due:

Provided that where a factory/establishment is permanently closed, the employer shall pay contribution on the last day of its closure:

Provided that an employer may opt, in such manner as may be prescribed, by the Director-General for payment of amount in advance towards contribution to be adjusted against contributions payable by him (including employees' contribution) for a wage period so that the balance of advance amount continues to be more than the contributions due and payable at the end of the concerned wage period. Such employer shall furnish in the prescribed proforma (Form 5A), a six-monthly statement of contributions payable and paid in advance with the balance left at the end of each month along with return of contributions to the appropriate regional office of the Corporation.

31A. Interest on contribution due, but not paid in time:

An employer who fails to pay contribution within the periods specified in Regulation 31, shall be liable to pay simple interest at the rate of 12 per cent per annum in respect of each day of default or delay in payment of contribution."

On a consideration of the provisions in sub sections (4) and (5) of Section 39 of the Act and the provisions in Regulations 31 and 31A of the Regulations, this Court in **Cannanore Drug Lines v. E.S.I. Corporation** (2007(1) KLT 880), held that merely because the employer failed to pay contribution allegedly under a bona fide impression or belief that they are not liable to pay contribution under the Act, they cannot be absolved from the liability to pay interest on the delayed payment of the contributions. It was also held in that case that the pendency of a dispute before the E.S.I. Court regarding the employer's liability to pay contributions under the Act cannot be a ground for exempting the employer from payment of interest in terms of S.39(5)(a) of the Act and the Regulation 31A of the Regulations. Paragraphs 4 and 5 of that judgment read as follows:

> 4. We notice that the scope of the above mentioned provision has been elaborately considered by a Division Bench of this court in W.A.1277 of 2003 with which we fully concur. S.39(4) of the E.S.I. Act states that the contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. Regulation 31 of the Employees' State Insurance (General) Regulations, 1950 stipulates that an employer who is liable to pay contributions in respect of any employee shall pay these contributions within 21 days of the last day of the calendar month in which contributions fall due. S.39(5)(a) of the E.S.I. Act states that if any contribution payable under the said Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the regulations till the date of its actual payment. Regulation 31A states that an employer who fails to pay contribution within the period specified in Regulation 31 shall be liable to pay simple interest at the rate of 12% per annum in respect of each day of default or delay in payment of contribution. Above

statutory provisions make it clear that the appellant was liable to pay the E.S.I. contributions which fell due on the last day of the wage period within 21 days of the last day of the calendar month in which the contributions fell due.

5. Merely because the appellant failed to pay contribution allegedly under a bona fide impression or belief that the establishment was not covered under the provisions of the E.S.I.Act cannot absolve the appellant from the liability of paying interest on the delayed payment of E.S.I. contribution under S.39(5) read with Regulation 31A. S.39(5)(a) uses the expression “if any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due”. Regulation 31A uses the expression “an employer who fails to pay contribution within the periods specified in Regulation 31”. Neither the provisions in the E.S.I. Act nor the provisions in the E.S.I. (General) Regulations give any discretion to the respondent to exempt the appellant from the liability to pay interest on the delayed payment of E.S.I. contribution. The bona fide impression of the appellant that his establishment was not covered under the provisions of the E.S.I. Act or the pendency of a dispute before the E.S.I. Court regarding the appellant's liability to pay E.S.I. contribution cannot be a valid ground for exempting the appellant from paying interest in terms of S.39(5)(a) and Regulation 31A. When the statute does not provide for any such exemption the respondent cannot exclude the amount of interest from the demand made against the appellant.”

6. Coming to the case on hand, as noticed above, the only contention raised by the respondent before the

Employees' Insurance Court was that their liability to pay contributions in respect of the canteen employees and security personnel was crystallised only by virtue of the decision of the Employees' Insurance Court in I.C.No.28 of 1990 dated 10.8.2007 and therefore, in the light of the provisions contained in Regulation 31 of the Regulations, their liability to pay interest would commence only from 31.8.2007. As held by this Court in **Cannanore Drug Lines** (supra), when the time for payment of contribution is fixed statutorily, in the absence of any provision in the statute exonerating the employers from the liability to pay interest until the disputes as to the liability to pay contribution are resolved finally by the Employees' Insurance Court, in cases where such disputes are raised before the Employees' Insurance Court, the employers cannot claim any immunity from the liability to pay interest in accordance with the provisions of the Act and the Regulations.

In the above circumstances, the impugned order is liable to be set aside and I do so. The appeal is allowed as above.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-