IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

INS.APP.No. 82 of 2011 ( )

AGAINST THE ORDER IN IC.NO. 4/2009
OF EMPLOYEES' INSURANCE COURT, PALAKKAD DATED 23-05-2011

APPELLANTS/OPPOSITE PARTIES :
----

1. EMPLOYEES' STATE INSURANCE CORPORATION
   REPRESENTED BY ITS REGIONAL DIRECTOR, ROUND NORTH
   THRISSUR-20.

2. RECOVERY OFFICER,
   E.S.I. CORPORATION,
   ROUND NORTH, THRISSUR-20.

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENT(S)/RESPONDENT/APPLICANT.:

M/S.MALABAR DECORATIONS
VALAOOR, CHERUVALOOR, THRISSUR DISTRICT
PIN-680 321, REPRESENTED BY ITS MANAGING, PARPTNER
P.I.JOHNSON.

BY ADV. SRI.M.B.PRAJITH

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

P.B.SURESH KUMAR, J.

= = = = = = = = = = = = =

Ins.Appeal.No.82 of 2011

= = = = = = = = = = = = =

Dated this the 3rd day of September, 2015.

J U D G M E N T

The Order on I.C.No.4 of 2009 on the file of the Employees' Insurance Court, Palakkad is under challenge in this appeal. The Employees' State Insurance Corporation and its Recovery Officer are the appellants.

2. The respondent is a concern engaged in the manufacture of decorative tiles. There was an inspection in the premises of the respondent by the Inspector attached to the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation' for short). In the course of inspection, it was found that the respondent had booked a total expenditure of Rs.11,98,345/- under the head 'Decoration Tiles Materials' during the financial years 2001-2002, 2002-2003, 2003-2004 and 2004-2005. It was also

found that the bills kept in support of the said expenditures are carbon copies of the purchase bills raised by the respondent themselves. When the aforesaid facts were brought to the notice of the Corporation, proceedings were initiated against the respondent under Section 45A of the Employees' State Insurance Act, (hereinafter referred to as 'the Act' for short), for determination of the contributions payable in respect of the said expenditures on the basis that the same do not represent genuine expenditures and that the same are expenditures incurred by the respondent involving an element of wages. In the said proceedings, the Corporation determined the contributions payable by the respondent in respect of the said expenditures at Rs.46,736/-. The order issued by the Corporation in this connection was challenged by the respondent before the Insurance Court. The case of the respondent before the Insurance Court was that the expenditures booked by them under the head 'Decoration Tiles Materials' are genuine expenditures incurred by them for procuring raw materials and that since the suppliers of the raw materials were not able to raise bills for the materials supplied to them, they have raised purchase bills for the same and the said course of action is permissible in law. The Insurance Court accepted the case set up by the respondent and allowed the application, holding that the respondent is paying contributions in respect of the wages and that there are no materials to indicate that the disputed expenditures involve a wage element. The Corporation is aggrieved by the said decision of the Insurance Court.

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

4. Ext.B1 is the report of the Inspector attached to the Corporation based on which the proceedings have been initiated against the respondent under Section 45A of the Act. It is stated in Ext.B1 report that the bills retained by the respondent in support of the above expenditures are the purchase bills raised by the respondent themselves. It is seen that it is on account of the said reason that the

Corporation assumed that the said expenditures booked by the respondent are not genuine expenditures and that the same are expenditures involving an element of wages. According to me, merely for the reason that there are no bills/vouchers in support of an expenditure booked by an employer, it cannot be assumed that the same is an expenditure involving a wage element. In the absence of any independent materials to show that the disputed expenditures are expenditures involving a wage element, I am of the view that the proceedings under Section 45A cannot be initiated. As far as the present case is concerned, as noticed above, the disputed expenditures are expenditures booked over a period of four years. There is absolutely no material on record to indicate that the same represent expenditures involving a wage element. The disputed expenditures may or may not be expenditures incurred towards decorative tile materials. But, that does not mean that the same are expenditures involving a wage element. In that view of the matter, I do not find any reason to interfere with the impugned decision.

The appeal is devoid of any merits and the same is, accordingly, dismissed.

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

Kvs/-

// true copy //

PA TO JUDGE.