IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

INS.APPEAL.No.103 of 2011 ( )

AGAINST THE ORDER IN IC 36/2009 of E.I COURT, PALAKKAD DATED 11.7.2011

APPELLANTS/OPPOSITE PARTIES :

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1. **EMPLOYEEES' STATE INSURANCE CORPORATION,**
   REP.BY ITS REGIONAL DIRECTOR, ROUND NORTH,
   THRISSUR.

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

BY ADV. SRI.K.SANDESH RAJA, SC, ESI CORPORATION.

RESPONDENT/APPLICANT :

RUBFILA INTERNATIONAL LIMITED,
NIDA, MENONPARA ROAD, KANJIKODE P.O.
PALAKKAD - 678621
REP.BY ITS MANAGER (HR AND ADMN)S.SHIBU

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

P.B.SURESH KUMAR, J

Ins.Appeal.No.103 of 2011

Dated this the 4th day of February, 2015

JUDGMENT

The decision in I.C.No.36/2009 on the file of the Employees Insurance Court, Palakkad is under challenge in this appeal. The Employees State Insurance Corporation (hereinafter referred to as 'Corporation' for short) and its Recovery Officer are the appellants.

2. The respondent is an establishment covered under the Employees State Insurance Act, 1948, (hereinafter referred to as 'the Act' for short). On 4.2.1999, an inspector attached to the Corporation inspected the premises of the respondent and detected short payment of contributions to the tune of Rs.35,108/- for the period 1996-97. Though the respondent was called upon to pay the contributions detected by the inspector on 4.2.1999, the amount was paid only on 23.4.2001. Consequently, proceedings under Section 85B of the Act was initiated against the respondent for non-payment of the aforesaid contributions by issuing a show-

cause notice to them. According to the respondent, in response to the said notice, they have appeared before the designated authority of the Corporation and explained the reason for the delay. The designated authority of the Corporation, thereafter, imposed a penalty of Rs.19,454/- on the establishment as provided for under Section 85B of the Act for non-payment of contributions after its detection by the inspector. When proceedings were initiated by the Corporation for recovery of the amount imposed by way of penalty, the application referred to above was filed, contending mainly that the order under Section 85B of the Act was passed without considering the objections raised by them. It is also stated in the application that there is no willful default or contumacious conduct on their part in not paying the contributions on time.

3. The Corporation filed a written objection in the proceedings contending that the non-payment of contributions detected by the inspector on 4.2.1999 can only be on account of wilful default and that therefore, the

the imposition of penalty is justified.

4. The Insurance Court, on a perusal of the material on record, found that the penalty was imposed on the respondent without considering the contentions raised by them in the proceedings under Section 45A of the Act and consequently set aside the order imposing penalty. It is aggrieved by the said decision of the Insurance Court that this appeal is preferred by the Corporation.

5. Even though notice was served on the respondent establishment, there is no appearance for them.

6. Heard the learned Counsel for the appellants.

7. The learned Counsel for the appellants pointed out that if the Insurance Court finds that the contentions raised by the establishment in a proceedings under Section 85B of the Act were not considered by the designated authority while imposing penalty, the matter can only be remitted to the Corporation for afresh decision. In other words, according to the learned

counsel, the respondent should not have been absolved from the liability to pay penalty for the reason that their objections were not considered by the authority concerned.

8. I have perused the order passed by the Corporation under Section 85B of the Act against the establishment. The said order recites that the contention of the employer for the delay in making the payment of Rs.35,108/- is not tenable. As found by the Insurance Court, the Corporation does not refer to the reasons stated by the establishment. It is settled that the proceedings under Section 85B of the Act can be initiated only in a case where there is wilful default in the matter of paying the contributions payable under the Act. A decision on the question whether the default on the part of the establishment is wilful or not can be arrived at only after considering the reasons, if any, raised by the establishment for non-payment of contributions on time. In the said circumstances, I am of the view that the matter shall be remitted for fresh consideration by the

Corporation.

In the result, the appeal is allowed, the impugned order is set aside and the Corporation is directed to consider the question of penalty afresh, after affording the establishment an opportunity of hearing.

Sd/-
P.B.SURESH KUMAR
JUDGE

/TRUE COPY/

PA TO JUDGE

vs