IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Ins.APP.No. 66 of 2010 ( )

IC.NO. 9/2007 OF EMPLOYEES INSURANCE COURT (INDUSTRIAL TRIBUNAL), KOLLAM DATED 25-03-2010

APPELLANT/COUNTER PETITIONERS :

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1. THE MANAGER,
   EMPLOYEES STATE INSURANCE CORPORATION
   REGIONAL OFFICE, KOLLAM.

2. THE JOINT DIRECTOR,
   EMPLOYEES STATE INSURANCE CORPORATION
   DIVISIONAL OFFICE, KOLLAM.

BY ADV. SRI.T.V. AJAYAKUMAR

RESPONDENT/PETITIONER :

MR.SUNIL,
M/S. SIMLA TEXTILES,
SONA SAREES AND SEASON READYWEAR
KOTTIYAM, PIN-691 571.

BY ADVS. SRI.R.KISHORE
SRI.G.HARIPRASAD
SRI.ARUN BABU

THIS INSURANCE APPEAL HAVING COME UP FOR ADMISSION ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

Ins. Appeal No.66 of 2010

Dated this the 9th day of July, 2015

JUDGMENT

The decision of the Employees Insurance Court, Kollam in Insurance Case No.9/2007 is under challenge in this appeal. The Manager of the Employees' State Insurance Corporation ('the Corporation' for short), Kollam and the Joint Director of the Corporation are the appellants.

2. The respondent is an establishment covered under the Employees' State Insurance Act ('the Act' for short) with effect from 1.4.2003. The respondent remitted the contributions payable under the Act for the period from October 2004 to March 2005 on 22.2.2005. Later, the officers attached to the Corporation detected non payment of contribution for the period from 1.4.2003 to 30.9.2004

and directed him to pay a sum of Rs.57,277/- towards dues for the said period. The said amount was remitted by the respondent when demanded by the Corporation. Thereafter, the Corporation initiated proceedings against the respondent for levy of damages under Section 85B of the Act for non payment of contributions payable for the period from 1.4.2003 to 30.9.2004 on time. The order passed in this connection by the Corporation was challenged by the respondent before the Insurance Court. The Insurance Court, on examination of the materials on record, found that non payment of contributions for the period from 1.4.2003 to 30.9.2004 by the respondent cannot be characterized as wilful and consequently set aside the order issued by the Corporation under Section 85 B of the Act. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

3. Heard the learned counsel for the appellants and the learned counsel for the respondent.

4. It is seen from the materials on record that the respondent had earlier requested the Corporation to bring his establishment under the Act to enable his employees to get the benefits and his request was rejected by the Corporation on the ground that the required number of employees were not employed by him. It is not disputed that later the establishment of the respondent was covered based on Ext.A6 request made by the respondent. It is admitted by the Corporation that the contributions payable by the respondent under the Act were being remitted by the respondent promptly after the establishment was brought under the Act. It is also seen that since the wages to the employees for the period from October 2004 to November 2005 had been disbursed by the respondent prior to the coverage of the establishment with retrospective effect, the respondent had paid from his pocket the contributions payable under the Act on his behalf as also on behalf of his employees. It is trite that the levy of damages is optional

and not mandatory and the said power vested with the Corporation can be invoked only in cases where there is material to show that non payment of contribution on time is wilful.

On the facts and circumstances of this case, I am of the view that the Corporation has not made out a case of wilful non payment of contribution. In such circumstances, the impugned decision is in order. There is no merits in the appeal and the same is accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm