(2016) 09 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 16981 of 2016

Bharat Sanchar Nigam Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Building and Other Construction Workers Welfare Cess Act, 1996 — Section 3

Citation : (2016) 10 ADJ 371

Hon'ble Judges : Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Rajeev Kumar Sinha, Advocate, for the Petitioner; C.S.C. and A.S.G, for the Respondents

Final Decision : Disposed Off

Judgement

1. Heard Sri. Rajeev Kumar Sinha, learned counsel for the petitioner and the learned standing counsel for the State that has initiated recovery proceedings against the petitioner and a recovery certificate dated 06.07.2016 has been issued which is under challenge in the present writ petition on the ground that the foundation of the recovery namely, the order dated 10.10.2014 does not conform to the provisions of the Building and Other Construction Workers'' Welfare Cess Act, 1996 and the Rules framed thereunder.

2. The contention is that firstly, the petitioner was not involved in any such construction activity for the past one decade so as to get assessed for payment of any payment of cess. Secondly, no proper notices were served on the petitioner and thirdly, there is no final assessment with regard to the cess as per the 1996 Act hence any recovery pursuant to the provisional assessment is without any authority in law.

3. Counter affidavit has been filed on behalf of the State where it is alleged that notices had been dispatched to the petitioner and when the petitioner failed to give any response then the Assessing Officer proceeded to provisionally assess

the quantum of cess on the basis of information available on record vide order dated 10.10.2014. It is further stated in the counter affidavit that consequent to issuance of notice to deposit after provisional assessment, the petitioner submitted a reply dated 23.02.2015. However, since no cess was deposited, the competent authority was left with no option but to issue a recovery certificate.

4. It is further stated in para-14 of the counter affidavit that the petitioner did not submit the details of the work executed by the petitioner nor any objections were filed earlier pursuant to the notice issued, therefore, no final assessment order could be passed. The fact that no final assessment order has been passed is, therefore, admitted in the counter affidavit.

5. It is here that the learned counsel for the petitioner submits that the petitioner cannot be relegated to the alternative remedy of appeal as an appeal would lie against the final assessment order and not a provisional assessment notice.

6. It is also contended that in the absence of any power to make provisional assessment, the exercise is without any authority in law. Having failed to pass a final order in spite of the objections of the petitioner, the recovery proceedings are vitiated.

7. Learned counsel for the petitioner has relied on the Division Bench judgment of the Delhi High Court in the case of Builders Association of India v. Union of India and another, reported in ILR (2007) Delhi 1143. Learned counsel for the petitioner has invited the attention to the contents of para-36 of the said judgment to urge that the said judgment also indicates that final assessment has to be made where after a statutory appeal can be filed.

8. Having considered the submissions raised and having perused the aforesaid documents which have been placed on record as well as the contents of the counter affidavit filed on behalf of the State, we find that the imposition of the cess is based only on a provisional assessment and the recovery sought to be made on the ground that since the petitioner did not furnish details, therefore, the authority was left with no option but to proceed with the recovery.

9. The fact remains that the 1996 Act provides under Section 3 that after final assessment, the amount so assessed, can be calculated which would be subject to any advance payment of cess in this regard.

10. The collection of cess by way of recovery therefore, can be made after a final assessment order is passed which is, however, subject to appeal under the provisions of 1996 Act. Therefore, the absence of final assessment having not been successfully disputed by the learned standing counsel, we find that the respondent No.3 authority, was under an obligation to make a final assessment before proceeding to issue a recovery certificate.

11. Consequently, in the circumstances indicated above, the petitioner shall file its objection apart from whatever has been stated earlier, within fifteen days from today. The said objection shall be considered and a final assessment order

shall be passed by the respondent No.3 within three weeks thereafter. The recovery so initiated shall, therefore, be subject to outcome of any such final orders that shall be passed by the authority as directed herein above. The respondent No.3 shall not undertake any coercive steps for recovery till such final orders are passed provided the petitioner files its objection and cooperates with the assessment proceedings.

12. The petition is disposed of with the said directions.

