(2023) 12 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5458 Of 2023

M/s Anvil Cables Private Limited — APPELLANT

Vs

State Of Jharkhand And Others — RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Citation : (2023) 12 JH CK 0011

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : M.S. Mittal, Apoorva Singh, Ashok Kumar Yadav

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Instant writ petition has been filed for issuance of an order/direction to the Respondents to refund the sum of Rs.1,25,06,155/- as labour cess on supply of materials under the BOCW Act, Cess Act and the Cess Rules.

2. Petitioner is a Company engaged in business of workers contract of the Government and was awarded contract for the tender for Rural Electrification Works of Giridih District under Din Dayal Upadhyay Gram Jyoti Yojna project in XIIth plan pursuant to NIT No.250/PR/JBVNL/2015-16.

3. Petitioner was selected as the successful bidder, two separate orders were issued in his favour which are as follows:-

I. Letter of Award for supply of materials being LOA No.03/RE dated 05.02.2016.

II. Letter of Award for erection and civil works being LOA No.04/RE dated 05.02.2016.

4. The main grievance of the petitioner- Company is that supply order, as referred to above, was only to supply materials in which no civil work was involved, and the work order was purely service based contract and involves the

services of labourers/ workers in setting up of the transmission lines and allied construction.

5. The total contract price of all the required materials/equipment was to the tune of Rs.96,95,23,881/- and under the work order, the total contract price for erection of all required materials/equipment came to Rs.7,93,08,883/- and further the total amount of labour cess deducted was Rs.1,25,06,155/-.

6. Apart from this, there were other purchase and work order on which cess has been deducted by respondent-JBVNL and aggrieved by said deduction, the present Writ Petition has been filed.

7. It is submitted by learned senior counsel for the petitioner that the grievance of petitioner's company is confined to supply of materials for which cess has been charged.

8. It is further submitted that whether on supply part in composite contract, cess can be deducted or not is no more res-integra. Law has laid in the judgment reported in Uttar Pradesh Power Transmission Corporation Limited & Anr. vs. CG Power and Industrial Solutions Limited and Anr., 2021 SCC OnLine 383 which emphatically holds that supply contracts were exonerated from the ambit of the said Cess Act, 1996. In this case, it was held that Uttar Pradesh Power Transmission Corporation Limited has no power and authority to realize labour cess under the Cess Act, 1996 in respect of first contract which was for supply. Law as laid down by the Apex Court, has been followed by Hon'ble the Division Bench of this Court in L.P.A. No.511 of 2022.

9. The specific stand of the JBVNL as per the counter affidavit is that earlier the deductions of cess were confined to the labour component of the contract and not to the supply part. However, after objections being raised by the Principal Accountant General, cess is levied on the entire contract value.

10. After having been considered the submissions advanced on behalf of both the sides there can be no shred of doubt that supply portion of the contract is not amenable to deductions of cess.

Under the circumstances, the Writ Petition is allowed with a direction to the respondent nos.2 and 3 to refund the deducted amount under the supply portion within eight weeks from the date of order with simple interest @ 6 % on the said amount. There will be no further deduction of cess on the supply part of the contract.

Writ Petition is allowed. Pending I.A, if any, stands disposed of.