**(2006) 08 AHC CK 0293**

**In the Allahabad High Court**

Municipal Board APPELLANT

Vs

The Cess Appellate Authority Known as Appellate Committee and The Uttar Pradesh Water Pollution Prevention and Control Board RESPONDENT

**Date of Decision :** 22-08-2006

**Acts Referred:**

Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 2, 3

**Citation :** (2006) 08 AHC CK 0293

**Hon'ble Judges :** S.U. Khan, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

S.U. Khan, J.—This writ petition is directed against orders dated 18.10.1979 and 16.10.1979 passed by respondent No. 2 U.P. Water Pollution Prevention and Control Board and order dated 13.11.1981 passed by respondent No. 1 Cess Appellate authority dismissing the appeal filed by the petitioner against the said orders.

2. Through the impugned orders Cess has been assessed and levied upon petitioner. Municipal Board, Bareilly u/s 3 of Water (Prevention and Control of Pollution) Cess Act 1977 (hereinafter referred to as the Act).

3. By virtue of Section 2(a) of the Act Municipal Board is local authority. By virtue of Explanation to Section 3 of the Act consumption of water includes supply of water. u/s 3(2) of the Act Cess is payable by every person carrying on (a) any specified Industry and (b) every local authority. By virtue of Section 3(1) it is further provided that Cess shall be collected for the purposes of the water (Prevention and Control of Pollution) Act. 1974 and utilisation there under.

4. In view of the above provisions both the respondents held that Municipal Board, Bareilly petitioner is liable to pay the Cess under the Act for the water which it supplies to the residents of the area for domestic purposes. The

 

appellate court clearly held that the Cess would be levied only for the water supplied for domestic purposes and not for the water supplied by the petitioner for any other purpose.

5. The Punjab & Haryana High Court in the following authorities has held that levy of Cess on Municipal Board for supplying water for domestic purpose to the residents of the area under its control is quite valid:

(1) Municipal Corporation of Jullundur City Vs. Union of India and Others,

(2) Haryana Tourism Corporation Limited Vs. Haryana State Board for the Prevention and Control of Water Pollution and another,

6. Learned Counsel for the petitioner has cited an authority of the Supreme Court reported in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, to contend that Cess may be levied only upon those Industries which are covered by the Schedule-1 of the Act. In the instant case there is no question of any Industry is involved. By virtue of Section 3 Cess is leviable upon two types of bodies one is certain Industries and the other is local authority. The argument of the learned Counsel for the petitioner that provision must be interpreted in such manner that it applies only to supply of water by local authority to Industries and for commercial purposes is not at all tenable. The two s of Section 3(1) are independent of each other and none takes colour from the other. Learned Counsel for the petitioner has further argued that the purpose of collecting Cess under the Act of 1977 is for defraying the expenses of the authority created under Water (Prevention and Control of Pollution) Act 1974 and its functions hence the Cess collection shall be confined to supply of water to Industries which may cause pollution. This argument is also not tenable. The language of Act of 1977 is absolutely plain and clear containing no ambiguity. The Cess collected under the Act of 1977 has got all the trappings of tax and need not be connected with any particular purpose or any particular duty or service. This point is fully established by the following illustration. Under U.P. Municipalities Act every Municipal Board (petitioner is also a Municipal Board) is entitled to recover from the residents water tax which is levied upon the house owners and the quantum of water tax is assessed on the basis of market value of the building over which Water tax is assessed irrespective of the fact that the said building has got water facility or not (vide Sections 128(1)(x) and 129(iii) of U.P. Municipalities Act, 1916). Even if water pipe passes through from a point which is 100 meters or less from the building, water tax is leviable.

7. Even otherwise it cannot be said that there is no nexus between levy of Cess for the purposes of prevention and control of water pollution upon the Municipal Board and supply of water for domestic purposes by it. Harmful effluents discharged by the Industries specified under the Act percolate in the ground and pollute the underground water which is supplied by the Municipal Board for domestic consumption. Under the aforesaid Act of 1974 the authority created

 

thereunder prevents and controls the pollution and in this manner it helps the Municipal Board in supplying water of better quality. Water of better quality is more essential for domestic consumption than for commercial purposes. Polluted water is not so harmful for commercial purposes as for domestic purposes. It is for this reason that Cess is levied upon the Municipal board for supplying water for domestic purposes and not for commercial purposes.

8. In some case it may be required to be decided as to whether Municipal Board is authorised to pass on the Cess under the aforesaid Act of 1977 to the consumers as is done by the traders in respect of sales tax

9. Accordingly, there is absolutely no error in the impugned orders.

10. Writ petition is therefore dismissed.

 