

(2026) 02 KL CK 1711

In the High Court Of Kerala

Case No : Writ Petition Nos. 32248 Of 2024, 3797 Of 2026, 4530 Of 2026, 1536 Of 2025, 1537 Of 2025, 1538 Of 2025, 1539 Of 2025, 1540 Of 2025, 10467 Of 2025, 10468 Of 2025, 11104 Of 2025, 14217 Of 2025, 17041 Of 2025, 21655 Of 2025, 22849 Of 2025, 23521 Of 2025, 24671 Of 2025, 29982 Of 2025, 30751 Of 2025, 31810 Of 2025, 31862 Of 2025, 31898 Of 2025, 31906 Of 2025, 31915 Of 2025, 31924 Of 2025, 31961 Of 2025, 32048 Of 2025, 36894 Of 2025, 41264 Of 2025, 41842 Of 2025, 41845 Of 2025, 41875 Of 2025, 41898 Of 2025, 42060 Of 2025, 42085 Of 2025, 42086 Of 2025, 42099 Of 2025, 42109 Of 2025, 45076 Of 2025, 15163 Of 2024, 16025 Of 2024, 16038 Of 2024, 16511 Of 2024, 16542 Of 2024, 16566 Of 2024, 46672 Of 2025, 16905 Of 2024, 17075 Of 2024, 17119 Of 2024, 17121 Of 2024, 17196 Of 2024, 17216 Of 2024, 17217 Of 2024, 17249 Of 2024, 17296 Of 2024, 17321 Of 2024, 17332 Of 2024, 17336 Of 2024, 17342 Of 2024, 17349 Of 2024, 17359 Of 2024, 17381 Of 2024, 17402 Of 2024, 17404 Of 2024, 17408 Of 2024, 17426 Of 2024, 17467 Of 2024, 17484 Of 2024, 17531 Of 2024, 17550 Of 2024, 22174 Of 2024, 26117 Of 2024, 26128 Of 2024, 29218 Of 2024, 29239 Of 2024, 29452 Of 2024, 29459 Of 2024, 29501 Of 2024, 29507 Of 2024, 29665 Of 2024, 29735 Of 2024, 31612 Of 2024, 32285 Of 2024, 32627 Of 2024, 32312 Of 2024, 32487 Of 2024, 32498 Of 2024, 32513 Of 2024, 32521 Of 2024, 32542 Of 2024, 32710 Of 2024, 32762 Of 2024, 32798 Of 2024, 32844 Of 2024, 34232 Of 2024, 34243 Of 2024, 34254 Of 2024, 34330 Of 2024, 34333 Of 2024, 34336 Of 2024, 35477 Of 2024, 35493 Of 2024, 35634 Of 2024, 39114 Of 2024, 39118 Of 2024, 39123 Of 2024, 39126 Of 2024, 40365 Of 2024, 40767 Of 2024, 40785 Of 2024, 40787 Of 2024, 43299 Of 2024 and 43509 Of 2024

M.V.,Viswanathan & Ors Kerala Water Authority, Rep. By Its Managing Director & Ors

Date of Decision : 17-02-2026

Acts Referred:

Constitution of India, 1950 — Article 14, 235

Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 — Section 2(1)(d), 2(1)(e), 2(1)(g), 2(1)(i), 3, 4, 5, 9, 11, 22, 23, 24

Buildings and Other construction Workers' Welfare Cess Rules, 1998 — Rule 3, 4, 4(3)

Citation : (2026) 02 KL CK 1711

Hon'ble Judges : Ziyad Rahman A.A., J

Bench : Single Bench

Advocate : P.Shanes Methar, N.Krishna Prasad, A.Mohammed Faizal, Arjun P.V., Harkish Sreethu V.S., Pushparaj.K.P, Georgie Johny, Justine Jacob, Sujith Mathew Jose, S.Krishnamoorthy

Final Decision : Disposed Of

Judgement

Ziyad Rahman A.A., J

1. In all these Writ Petitions, the petitioners are contractors, who were awarded with the works by the Kerala Water Authority, mainly in connection with drawing of pipelines and other matters. The question that arises in these cases is with regard to the deduction proposed to be made from the contract amounts at the rate of 1% thereof, towards the payment of the Cess payable under the provisions of The Building and Other Construction Workers' Welfare Cess Act, 1996, (hereinafter referred to as the "Cess Act"). In all these cases, interim orders were granted by this Court directing the Kerala Water Authority not to deduct the said amount at the said rate.

2. The challenge raised against such demands are mainly on the ground that the activities included in the contract are not entirely coming within the scope of the definition of "Building or other construction work" as defined under Section 2(1) (d) of The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as the "Regulation Act"). Thus, according to the petitioners, the deduction of 1% on the total contract value as specified in the contract, is beyond the scope of the statutory stipulations contained in the Regulation Act as well as the Cess Act. The petitioners have mainly relied on the observations made by the Hon'ble Supreme Court in Uttar Pradesh Power Transmission Corporation Limited and Another v. CG Power and Industrial Solutions Limited and Another [(2021) 6 SCC 15].

3. The respondents, i.e., State Government, the Kerala Water Authority as well as the Kerala Building and Other Construction Workers Welfare Board, filed their counter affidavits disputing the contentions raised by the petitioners and opposing their reliefs.

4. Heard Shri.N.Krishna Prasad, Shri.P.Shanes Methar, learned counsel for the petitioners and Shri.Asok M. Cherian, learned Additional Advocate General, assisted by Sri Shyam Prasad, the learned Government Pleader, for the State Government, Shri.S.Krishnamoorthy, learned Standing Counsel for the Kerala Building and Other Construction Workers Welfare Board, Shri.Georgie Johny, Shri.Sujith Mathew Jose and Shri. Justine Jacob, the learned Standing Counsel appearing for the Kerala Water Authority.

5. Before going into the factual and legal contentions raised in these Writ Petitions, it is necessary to examine the relevant statutory provisions that are

applicable to these cases. As observed above, the resolution of the dispute in these Writ Petitions, involves interpretation of various statutory provisions contained in the Regulation Act as well as the Cess Act. As far as the Regulation Act is concerned, the same is an enactment, which was introduced for the purpose of ensuring welfare of the building and other construction workers. The Section 2(1)(d) of the said Act, defines the term "building or other construction work" which reads as follows:

"(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, *pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

(*Highlighted for emphasis)

The term 'building worker' is defined under Section 2(1)(e) of the Regulation Act, which reads as follows:

"(e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not includes any such person –

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

The term 'contractor' is defined under Section 2(1)(g) which reads as follows:

"(g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;"

The term 'employer' is defined under Section 2(1)(i) of the Regulation Act, which reads as follows:

"(i) "employer", in relation to an establishment, means the owner thereof, and Includes,-

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

The Section 24 of the Regulation Act provides for constitution of Building and Other Construction Workers' Welfare Fund, for the purpose of creating a fund and the applications thereof. The said provision reads as follows:

"24. Building and Other Construction Workers' Welfare Fund and its application.—

(1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

(a) any grants and loans made to the Board by the Central Government under section 23;

(b) all contributions made by the beneficiaries;

(c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2)The Fund shall be applied for meeting—

(a) expenses of the Board in the discharge of its functions under section 22; and

(b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(c) expenses on objects and for purposes authorised by this Act."

(3) No Board shall , in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent. Of its total expense during that financial year.

6. The Cess Act was enacted for the purpose to provide for the levy and collection of cess on the cost of construction incurred by the employers with a view to augmenting the resources of the Building and other Construction Workers' Welfare Fund constituted under the Regulation Act. Section 3 thereof, provides for levy and collection of cess, which reads as follows:-

"3. Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), at such rate not exceeding two per cent. but not less than one per cent. of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent. of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub -section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved."

7. Section 4 of the Cess Act deals with the furnishing of the returns, which mandates that every employer shall furnish return to such officer or authority in such manner and at such time as may be prescribed. Section 5 of the Cess Act deals with the assessment of cess, which authorises the competent officer or authority, to determine the amount of cess based on the return furnished under Section 4 or in the case where no return filed, to determine the said amount after making an inquiry in this regard. The said Act also contemplates for appeal as per Section 11, in case any employer is aggrieved by an order of assessment made under Section 5 or by imposing any penalty made under Section 9, before the Appellate Authority as may be prescribed.

8. These are the statutory provisions that lay down the scheme under which the Building and other Construction workers' Welfare Cess is to be determined and collected. The persons responsible to make the said payments are also referred to in the above said provisions.

9. Apart from the above, the manner in which, the assessment, recovery and other matters relating thereto, is to be made, is prescribed in The Buildings and Other construction Workers' Welfare Cess Rules, 1998 (hereinafter, referred to as "Cess Rules"). Rule 3 provides for the levy of cess, which gives an indication as to how, the cost of construction has to be reckoned. The said provision reads as follows:-

"3. Levy of Cess:-For the purpose of levy of cess under Sub-sec (1) of Sec. 3 of the Act, cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work but shall not include—

cost of land;

any compensation paid or payable to a worker or his kin under the Worker's Compensation Act, 1923."

Rule 4 contemplates the manner in which the cess has to be collected, which reads as follows:-

"4. Time and manner of collection:- (1) The cess levied under Sub -sec. (1) of Sec. 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalized, whichever is earlier, to the cess collector.

(2) Notwithstanding the provisions of Sub-rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provisions of Sub-rule (1) and Sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of Sub-rule (1) and Sub-rule (2), where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of cess payable at the notified rates from the estimated cost of construction:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payment of cess due shall be made as per the provisions of Sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under Sec. 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located: Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of cess due shall be made as per the provisions of Sub-rule (2).

(6) Advance cess paid under Sub-rules (3), (4) and (5), shall be adjusted in the

final assessment made by the Assessing Officer.”

10. The sub-rule (3) of Rule 4 contemplates that, where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted, the cess payable at the notified rates, from the bills paid for such works. Thus, going by sub-rule (3) of Rule 4, the Kerala Water Authority is supposed to deduct the cess, from the amount payable to the Contractors. Apparently, in fulfillment of the aforesaid obligation, a clause was incorporated in the agreements entered into between the petitioners and the Kerala Water Authority. Ext.P1 in W.P.(C) No.40365 of 2024 is one of such agreements and clause 8.16.12 provides that;

“From the "On account" payments, deductions shall, be made by the Authority at the rate of 1% of the amount of bill, excluding cost of departmental material if any supplied, towards contribution to the Kerala Construction Workers Welfare Fund Board”.

11. Thus, in the light of the statutory stipulations and the contractual term referred to above, the Kerala Water Authority proposed to deduct 1% of the amount from the bills submitted by the petitioners towards the value of the work carried out by them. It was at this juncture, these Writ Petitions were submitted, challenging such course of action. The specific contention raised by the learned counsel for the petitioners is that, as far as the contracts entered into between the petitioners and the Kerala Water Authority are concerned, in the Bill of Quantities (BoQ) thereof, the rates for the articles to be supplied as part of the contract and the execution of the work to be carried out, which includes laying of pipes, installation/erection of various types of machineries, etc, are separately provided. According to the learned counsel for the petitioners, as far as the supply element is concerned, the same by itself would not come under the definition of Section 2(1)(d) by which, the term ‘building or other construction work’. has been defined and therefore, the deduction of any amount for those values are beyond the scope of the statutory stipulations contained in the Regulation Act as well as the Cess Act.

12. As observed above, reliance was also placed on the observations made by the Honourable Supreme Court in CG Power and Industrial Solutions Limited’s case (supra), which was followed by some other High Courts. Apart from the observations made in CG Power and Industrial Solutions Limited’s case (supra), the learned counsel for the petitioners also placed reliance upon the definition of the term ‘Contractor’ as defined under Section 2(1)(g) of the Regulation Act. As per the said definition, a ‘Contractor’ is, a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor. The said definition specifically excludes the contract for the mere supply of goods or articles of manufacture, and what is included therein, is the contract that

employs the building workers or carrying out the building and construction work or supplying the building workers for any work of the establishment.

13. In CG Power and Industrial Solutions Limited's case (*supra*), the Honourable Supreme Court considered a similar question, and after examining the various provisions contained in the Regulation Act as well as the Cess Act, came to a finding that, in respect of the contracts where, the purpose is to supply the materials, no cess can be deducted. The factual circumstances considered by the Honourable Supreme Court in the said judgment related to the deduction made by the public undertakings from the bill amounts of the petitioners therein, for realising the cess amount. However, the crucial aspect to be noticed in the said decision is that, that was a case in which, the contract for implementing a project, was split into four; the first contract dealt with the supply and delivery of equipment, second contract was for handling, erection testing and commissioning works, the third contract was for civil works and the fourth contract was for the operation and maintenance for a period of three years.

14. After elaborately discussing the various provisions under the enactments referred to above, the Hon'ble Supreme Court came to a definite finding that, as far as the first, second and fourth contracts are concerned, no cess can be deducted, since the same do not involve the activities referred to in Section 2(1) (d) of the Regulation Act. Of course, it is true that in paragraph no.53 of the said judgment, an observation was made to the effect that "Mere installation and/or erection of pipelines, equipments for generation or transmission or distribution of power, electric wires, transmission towers, etc. which do not involve construction work are not amenable under the Cess Act." Thus, it was contended that, in the light of the aforesaid observations, no cess could be collected from the petitioners in respect of the value of the contracts, to that extent it relates to the supply of the materials. The learned counsel also placed reliance upon the observations made in *Dewan Chand Builders and Contractors v. Union of India and others* [(2012) 1 SCC 101] where, it was observed that, the cess under the Cess Act, is not having the characteristics of a tax, but it is simply a fee. Therefore, a different yardstick needs to be applied when it comes to the interpretation of the provisions relating thereto.

15. However, the crucial aspect to be noticed, while trying to understand the observations made by the Honourable Supreme Court in CG Power and Industrial Solutions Limited's case (*supra*), is that, those observations were made in a case where, separate contracts were entered into, between the parties, by segregating the supply element and other aspects of the matter, from the execution part that relates to the "building and other construction works" as defined in section 2(1) (d) of the Regulation Act, even though the entire work formed part of a single project, which was to be completed by a single contractor. Thus, the rights and liabilities that arose from the said contracts were in respect of the different nature of transactions, based on different terms and conditions by way of separate contracts. It was in that context, the Honourable Supreme

Court interpreted the provisions of the statutes referred to above, and arrived at the finding that, in respect of the value covered by contract nos.1,2 and 4, no liability to pay the cess arises. The observations referred to in paragraph no.53 of the said decision, which is extracted above, was also made in connection with the aforesaid issue. Moreover, a careful reading of the decision rendered by the Hon'ble Supreme Court as a whole, would clearly indicate that, the discussion and finding therein were, from the point of view of the liability of the contractor who entered into certain contracts, which exclusively dealt with the supply of certain goods. In other words, the interpretations were contract centric, where, the transactions only related to the supply and evidently did not involve any "building or other construction work". The obligation of execution or carrying out any "building or other construction work" as defined under Section 2(1)(d), was not at all the subject matter of the said decision. This is an important aspect that distinguishes the decision rendered by the Honourable Supreme Court, on facts, from the cases that are being dealt with in these writ petitions.

16. When coming to the terms and conditions in the contracts in these cases, it is an admitted position that, those are composite contracts, containing the obligation of supplying the materials and also to carry out the said works, which are inseparable. It is reported that, in most of the cases, the work was, laying of pipelines and other incidental works, and going by the definition of 'building or other construction work' in Section 2(1)(d), the said work includes the pipelines as well, as it is expressly included therein. Therefore, as the "pipeline" is specifically included in the said work, that distinction has to be considered, when we are applying the principles laid down by the Honourable Supreme Court in CG Power and Industrial Solutions Limited's case (supra) in the facts and circumstances in these cases. As observed above, even though the BoQs which form part of the contracts entered into between the parties in these cases, contain separate rates for the supply and the execution of works, it is a fact that the liability of the contractor contains both supply and execution, and are inseparable from each other.

17. To be precise, merely because the contractors have made supplies as required in the contract, the obligations of the contractors would not come to an end, and it would continue until the execution of the work is completed to the satisfaction of the Kerala Water Authority. Thus, it is a composite contract where, the main activity is laying of pipelines, which comes under the "building or other construction work" as defined in Section 2(1)(d) of the Regulation Act. Of course, Section 2(1)(g) of the Regulation Act, defines the term 'contractor', in which, a contract which is merely for the supply the goods and articles of manufacture, is specifically excluded therein. The aforesaid exclusion is apparently made in the term of 'contractor', in view of the fact that, as far as the supply of goods or articles is concerned, it does not necessitate the availing of services of building and other construction workers. The purpose for which the cess is created, is to provide funds to establish a welfare fund for such workers, as required under the provisions of the Regulations Act and hence, the liability to pay such cess, can be

imposed upon the contractors/employers, who avail the services of such employees. As far as the mere supply of goods and articles is concerned, the same does not involve availing of the services of any building and other construction workers and therefore, the question of imposing any liability upon such contractors/employers does not arise.

18. However, since in these cases, the liability of the contractor is not confined to the supply alone and it extends to the execution of the work, the obligations of the contractors cannot be fulfilled, without availing the services of the building and other construction workers. Further, the supply of goods are made for the purpose of execution of the works, and thus execution is the main purpose of the contract and the supply is an incidental activity that is necessary for facilitating the execution of the work. Thus, the predominant object of the contract is, to carry out the work. As part of such obligation to execute the work, the moment when the contractors avail the services of the building and other construction workers, the incidence of cess, as contemplated in the Cess Act would occur with all its vigour, and such contractors would become liable to make the payment of cess. Therefore, once the contractor is availing the services of such workers, the operation of the Cess Act gets triggered, and the amount towards cess, would become payable on the cost of construction incurred by such contractor. As far as the value of the articles supplied are concerned, since the said goods are subsumed in the construction, and the cess is to be calculated on the cost of construction, the value of such goods cannot be segregated, while determining the amount of cess. Cost of such supply is the integral part of the cost of construction and hence an assessment of cess, without including the cost of supply, would not be proper, in a case where, the activity is found to be coming within section 2(1)(d) of the Regulation Act and the contractor had availed the services of the building and other construction workers, for fulfilment of the obligations under the contract in question. Any other interpretation would defeat the purpose of the Cess Act, as excluding the value of the supply part, from determining the cess, would substantially reduce the amount that could be collected as cess. In this regard, it is to be noted that, the whole purpose of the enactment of the Cess Act, is to augment the resources of the Building and Other Construction Worker's Welfare Boards constituted under the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and thus, it is a welfare legislation. Therefore, an interpretation that promotes the objects and reasons of the same, is required to be adopted.

19. The learned counsel for the petitioners placed reliance upon the decisions rendered by the other High Courts such as, the decisions of the Jharkhand High Court in *Genus Power Infrastructures Ltd v. State of Jharkhand and others* [2023 SCC OnLine Jhar 2373] and in *State of Jharkhand v. Flowmore Limited and others* [2023 SCC OnLine Jhar 1197], and the decision of the High Court of Madhya Pradesh in *M/s Orange Mamatkhedha Wind Pvt Ltd v. The State of Madhya Pradesh and others* [WP No 10439 of 2021]. However, the said decisions were

rendered either in different factual circumstances or by following the decision of the Honourable Supreme Court in *CG Power and Industrial Solutions Ltd 's case* (supra), without any reference to the distinguishing factors as referred to above. It is a settled principle that the judgments have to be interpreted in the context of the specific facts and issues they address, and the observations cannot be applied rigidly without considering the factual backdrop of the case. In *Secretary to Government, Health and Family Welfare/Education Department v. L. R. Arunadevi*, [2025 KHC 317], this Court has rightly observed that ;

"16. It is a well-settled principle of law that a judgment must be understood in the context of the facts of the case and cannot be treated as a general formula. Judicial observations are often case-specific and must be interpreted in light of the pleadings, issues, and evidence presented. The Hon'ble Supreme Court has consistently emphasized that judgments should be read and applied in the context of the specific facts and circumstances in which they were delivered. In the case of *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647, it was observed as follows:

"12. Now let us consider the ratio of the decisions in *Nripendra Nath Bagchi's case*, 1966 (1) SCR 771, and *Ranga Mahammad case*, 1967 (1) SCR 454. In *Bagchi case*, 1966 (1) SCR 771, this Court laid down that the word "control" found in Article 235 includes disciplinary jurisdiction as well. The question of law considered in that decision was as regards the scope of the expression "control over District Court" in Article The reference to the cadre was merely incidental. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in *Quinn v. Leathern* ((1901) AC 495). "Now, before discussing the case of *Allen v. Flood*, ((1898) AC 1) and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all." It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

20. Similar view was taken by the Hon'ble Apex Court in a catena of decisions including *Sarva Shramik Sanghatana (KV) v. State of Maharashtra* [(2008) 1 SCC 494 : (2008) 1 SCC (L&S) 215 : AIR 2008 SC 946] (SCC pp. 499-501, paras 14- and in *Govt. of Karnataka v. Gowramma* [(2007) 13 SCC 482 : AIR 2008 SC

863] . In *Deepak Bajaj v. State of Maharashtra*, (2008) 16 SCC 14, it was held that;

"7. It is well settled that the judgment of a court is not to be read mechanically as a Euclid's theorem nor as if it were a statute.

"14. On the subject of precedents Lord Halsbury, L.C., said in *Quinn v. Leatham* [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] : (All ER p. 7 G-I)

'[Now before] discussing *Allen v. Flood* [1898 AC 1 : (1895- All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.' (emphasis in original)

We entirely agree with the above observations.

In *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] (vide SCC p. 221, para 18) this Court observed:

'18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.'

In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:

'59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.'

As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed: (SCC pp. 584-85, paras 9-12)

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. (emphasis in original) These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to

explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. (emphasis supplied) In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

"... The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ..."

In *Home Office v. Dorset Yacht Co. Ltd.* [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said:

"... Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances."

Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)* [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: (All ER p. 1274 d)

"... One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;"

And, in *British Railways Board v. Herrington* [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761 c)

"... There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo [, J.]) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. (emphasis in original) My plea is to keep the path of justice clear of obstructions which could impede it."

Thus, in the light of the above, the decision rendered by the Hon'ble Supreme

Court in CG Power and Industrial Solutions Ltd 's case (supra), cannot applied in this case.

21. The next question to be considered is with regard to the meaning of the "cost of construction" as referred to in Section 3 of the Cess Act. While trying to understand the meaning of the "cost of construction as" referred to Section 3, it is to be noted that, from the object and reasons of the Cess Act itself, it can be seen that, the purpose of levy and collection of cess, was for augmenting the resources of the Building and Other Construction Workers Welfare Fund constituted under the Regulation Act and the same was intended to be imposed on "the cost of construction". In Section 3 of the Cess Act, the expression used is – "the cost of construction incurred by an employer". Rule 3 of the Cess Rules, further explains the "cost of construction" where, it is stipulated that, "the cost of construction" shall include all expenditure incurred by an employer in connection with the building or other construction work but, shall not include – "cost of land and any compensation paid or payable to a worker or his kin under the Workmen's Compensation Act, 1923". Thus, a conjoint reading of Section 3 of the Cess Act with Rule 3 of the Cess Rules, would indicate that, the cost of construction is explained to mean, all the expenditure incurred by an employer in connection with the building or other construction work, excluding the matters specifically referred to as exclusion in Rule 3, which are the cost of land and the compensation paid under Workmen's Compensation Act. Thus, a very wide meaning has been assigned to the "cost of construction" which is intended to take within it, all elements involved in the construction, except the specific exclusions made therein. Therefore, the only conclusion possible from the above is that, once it is found that, the main activity in the contract comes within the definition of 'building or other constructions work' as per Section 2(1)(d) of the Regulation Act, the entire amounts incurred by the employer as the cost of the construction would be the subject matter for determining the cess payable under the Cess Act. Evidently, the the supplies made for execution of the works is forming the integral part of the construction and hence, the cost of supplies, would become part of the cost of construction as well. Therefore, the same has to be taken into account, while calculating the cess payable by the contractors concerned.

22. Another aspect to be examined is with regard to certain exclusions to be made when computing the cost of construction, depending upon the person responsible to pay the amount. This aspect becomes relevant in view of the contention raised by the learned counsel for the petitioner that, as far as the contractor is concerned, by virtue of of definition of 'employer' as per Section 2(1) (i) of the Regulation Act, if the building or other construction work was carried on by the contractor or by the employment of a building workers supplied by the contractor, such contractor would be the employer. Therefore, it was contended that, what could be relevant, is the actual expenditure incurred by the contractor, and it cannot be the amount specified in the contract as such. This submission is mainly on the reason that, as far as the value of the contract is concerned, the

same includes the profit element of the contractor and the same will have to be excluded, as the said profit cannot be treated as the cost incurred by such contractor.

23. The learned Additional Advocate General, in response to the aforesaid contention, specifically brought to the attention of this court, the definition of 'employer', as per section 2(1)(i) of the Regulation Act, which is an inclusive definition. Going by section 2(1)(i), it can be seen that, the employer in relation to an establishment is defined as the owner thereof, and the contractors were included in the subsequent provisions therein. Thus, it is the contention of the learned Additional Advocate General that, a wider definition has been given to the employer, which takes in, the owner of the establishment for whom, the work is done and it also takes in, the contractor through whom, the work is executed. As far as the owner of the establishment is concerned, the cost of the construction would include the total expenses which he had to meet, and it would contain the profit element of the contractor. According to the learned Addl Advocate General, merely because of the reason that, the work was carried out through a contractor, the liability of the owner of the establishment would not be extinguished, but, it would continue and the ultimate amount of cess to be determined, is based on the total value of the contract, irrespective of the profit element, because that is the final amount of cost of construction. The learned Additional Advocate General also placed a decision rendered by a learned Single Judge of this Court in Vrindavan Apartments Pvt.Ltd. v. Appellate Authority under the Building and Other Construction Workers Welfare Cess Act, 1996, Thrissur and Others [2010 KHC 945] wherein, while determining the obligations of the owner of the establishment, this question was incidentally considered by this Court. It was observed in paragraph 8 of the said decision as follows:-

"8. However, coming to the factual position and the sequence of events, it is noted that an interim stay was granted by this Court on 16.05.2005, taking note of the contention of the petitioner that the liability was exclusively on the shoulders of the 4th respondent, by virtue of the stipulation in the construction agreement. The contention of the petitioner that the petitioner is not the actual employer in respect of the construction of the building and that it was none other than the 4th respondent does not appear to be palatable to this Court, for the obvious reason that the crucial question to be considered is, who met the cost of the construction or for whose benefit/requirement the construction was effected. The construction effected either by oneself or by engaging a contractor by itself will not tilt the balance, so as to shift the liability from the shoulders of the person at whose instance the construction is carried out, unless the liability is already satisfied by the latter. If the proposition made by the petitioner is to be accepted, it could even be contended that the person who actually constructs the building being the 'mason', the liability has to be shifted to such person. This sort of interpretation or construction is rather beyond the scheme of the statute and does not deserve any consideration at all."

24. Thus, it was laid down that, ultimate person responsible to pay the said amount, is the person for whom the work is carried out. After carefully going through the relevant statutory provisions and the observations made by this Court in Vrindavan Apartments Pvt.Ltd (supra), I find merit in the contention put forward by the learned Additional Advocate General. This is because, the definition of employer is an inclusive definition, that takes in, the owner of the establishment as well as the contractor who undertakes the work. If different amounts are to be determined as cess, for the actual owner for whom the construction is made and the contractor through whom the construction is made, the purpose of the enactment will be defeated and it would bring in, uncertainties in quantifying the amount of cess, depending upon the person responsible to pay the same, even though the transaction that formed the basis of collection of cess remains the same. Therefore, I do not think that, an interpretation in such fashion could be given to the statute and it cannot be the intention of the legislature. What is crucial, is the nature of transaction involved in the contract and once it is found that that activity comes within the scope of the definition of 'building or other construction work', all the provisions in the Act will have to be made applicable and the cost of construction has to be reckoned, based on the cost of construction, as clearly provided in Section 3 of the Cess Act, and as explained in Rule 3 of the Cess Rules. If different rates are determined based on the person responsible for such payment, it would create an unreasonable classification, which is not permissible under Article 14 of the Constitution of India.

25. This is particularly because, whoever pays the cess, whether it is the owner of the establishment or the contractor, the incidence of such collection is the availing of services of workers for carrying out an activity that comes within the definition of "building and other construction work". Prescribing different methods of calculation for the same activity to different persons cannot be the intention of the legislature and if such an interpretation is adopted, it would be against the Constitutional principles referred to above. Therefore, I am of the view that the said contention also cannot be accepted.

26. Apart from the above, another crucial aspect to be noted is that, as per the clause 8.16.12, a contractual obligation is imposed upon the petitioners herein, to subject their bills to deduction, at the rate of 1% of the total bill amount. This, contractual obligation, being the one incorporated in fulfilment of the obligations of the Kerala Water Authority that flow from Rule 4(3) of the Cess Rules, under no circumstances, the same can be interfered with. Moreover, the petitioners have entered into the contracts with their open eyes, and since, the relevant clause was introduced in fulfillment of a statutory obligation, the same has to be complied with, in all circumstances.

27. However, even while arriving at the said conclusion, one aspect is to be noticed. Merely because, an amount at the rate of 1% of the contract amount has been deducted from the bills, that by itself would not attain the finality, with

regard to the obligation of the contractors to pay the said amount. The said deduction is made only to facilitate the collection of the cess effectively and such collection can only be treated as provisional. On going through the provisions of the Cess Act, it can be seen that, Section 4 provides that every employer shall furnish a return to such officer or authority in such manner and such time as may be prescribed. The rules provides the manner in which such returns are to be filed. Once the returns are filed, the officers or the authority prescribed in this regard, have to make an assessment based on the factors conceded in the returns, after conducting an inquiry to determine the actual amount payable. In case no returns are filed, by virtue of sub-section (2) of Section 5 of the Cess Act, the officer or authority concerned, after making or causing to be made an inquiry, pass an order determining the amount of cess payable by the employer. Thus, even if, the amount at the rate of 1% is deducted from the contract value, that would not deprive the said contractor from invoking the remedies available to such contractors as contemplated under Sec.4. To be precise, even if such deductions are made, it shall be open to the petitioners herein, to submit a return as per Section 4, and in such an event, it shall be obligatory for the Officer or the Authority to conduct necessary inquiry and to determine the actual amount, if any, payable by the contractor. In case the contractor is able to establish that the activity covered by the contract is something which is not covered under Sec.2 (1) (d) of the Regulation Act, necessarily such contractor will have the right to get the amount back from the authorities, since, in such an event, the collection by itself would become illegal.

28. Moreover, even if no returns are submitted, the officer or authority shall still be under an obligation to make an assessment by issuing an order Sec.5(2) of the Act. There also, while completing the inquiry, the question as to whether the activity falls within the ambit of Sec.2(1)(d) is to be examined by the officer concerned. In that case also, if it is found that it is not an activity that comes within Sec.2(1)(d), necessarily the refund will have to be ordered. As against the assessment so made, the contractor will have the statutory remedy of appeal as contemplated under Sec.11 as well. In short, the fact that, the payments were affected by way deductions from the contract amounts, would not absolve the authorities under the Cess Act, to assess the correct amount payable as per the Act.

In such circumstances, these writ petitions are disposed of, holding that, the deduction of 1% from the contract value made in furtherance of the Clause 8.16.12 of the contracts between the petitioners and the Kerala Water Authority, cannot be treated as illegal, particularly since, the same is in tune with the statutory stipulations contained in Rule 4(3) of Cess Rules. Therefore, the right of the Kerala Water Authority to make such deductions is upheld. It is clarified that, even if such deductions are made, it shall be open to the petitioners/contractors to establish, on facts, by supplying necessary materials, along with the return to be submitted under Sec.4, that they are not coming under Sec.2(1)(d) of the Act. In the event of such contentions being accepted, they shall be entitled to get

the amount refunded. In all these cases, it shall be open to the Kerala Water Authority to make necessary deductions towards the building and other construction workers welfare cess, from the amounts payable to the petitioners or by recovering it through the other legally recognized methods.