
(2015) 04 DEL CK 0198
In the Delhi High Court
Case No : Writ Petition (C) 7402 of 2009

Rajesh Khanna

APPELLANT

Vs

Deputy Labour Commissioner South and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Building and Other Construction Workers Welfare Cess Act, 1996 — Section 2(i), 2(j),
3, 4, 4(1)
Constitution of India, 1950 — Article 226

Citation : (2015) 04 DEL CK 0198

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant

Final Decision : Disposed off

Judgement

V.P. Vaish, J.

1. By the present petition under Article 226 of Constitution of India, the petitioner assails notice No. 17(10) /BOCW/PG/Lab./05/6061 dated 24.10.2008 under Section 4(2) of The Building and Other Construction Worker's Welfare Cess Act, 1996 (hereinafter referred to as the "Act") passed by Deputy Labour Commissioner (South), Labour Department, Government of NCT of Delhi.

2. Briefly stating the facts of the case as borne out from the petition are that the father of the petitioner Late Shri Vishwanath Khanna was owner of the built up factory building, who expired on 07.01.2007. Thereafter, pursuant to the family partition the said factory building devolved upon the petitioner in an already built up condition. The petitioner decided to carry out repair/maintenance work in the factory building and for the said purpose the petitioner assigned work to certain contractors. These included M/s. K.C. Stone Contractor, Friends Fire and Engineers and Consultants and Suman Kumari (Mudphaska Brick Tile work). On 04.08.2008, the petitioner received a show cause notice from an inspector under the Act for compliance of various provisions of the Act. The said notice was

replied to by the petitioner vide his reply dated 29.09.2008 wherein the petitioner submitted that he was not covered by the provisions of the Act.

3. On 03.10.2008, another notice was sent to the petitioner by one Shri S.K. Gupta, Labour Officer (South) / CESS Collector under the Act directing the petitioner to pay cess in terms of the said notice. The petitioner once again submitted its reply to the said notice on 03.11.2008. However, without considering the representation of the petitioner, the assessing officer, respondent No. 1 sent a notice dated 24.10.2008 to the petitioner under Section 4(2) of the Act requiring the petitioner to furnish the return under Section 4(1) of the Act and threatening recovery of cess by coercive process. Under such circumstances, the petitioner has preferred the present petition.

4. Learned counsel for the petitioner contended that the petitioner did not employ any worker for any construction work. It is the contractors who had deputed the workers and the petitioner is neither covered by the definition of "establishment" under Section 2(j) of the Act nor is he covered by the definition of the expression "employer" under Section 2(i) thereof.

5. It is further contended by learned counsel for the petitioner that the respondents had neither considered the representation made on behalf of the petitioner nor had it communicated any order on the contention that he was not covered under the provisions of the Act.

6. None appeared on behalf of the respondent despite service and they were proceeded ex-parte on 13.04.2010.

7. I have heard the learned counsel for the petitioner and have perused the material on record.

8. Before examining the facts of the case it would be pertinent to consider the relevant provisions of Sections 3, 4 and 5 of the Act, which read as under:-

"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, 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.

4. Furnishing of returns."(1) Every employer shall furnish such return to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

5. Assessment of cess."(1) The officer or authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer."

9. A perusal of the aforesaid provisions of the Act show that under sub-section (1) of Section 3, a cess for the purposes of the Building and Others Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 at the rate not exceeding two percent but not less than one percent of the cost of construction incurred by an employer is leviable on the employer if a notification is issued in the official gazette by the Central Government. Under Section 4(1) the employer is duty bound to furnish the return to the officer or the authority in the manner as prescribed. Further, on a failure on part of the person who is liable to pay the cess under Section 3 to furnish any return under sub-section (1), the officer or the authority concerned is duty bound to give a notice under Section 4(2) of the Act requiring such person to furnish such returns before such date as may be specified in the notice. Thereafter, the assessment on the returns as furnished under Section 4 is made by the officer or authority concerned under Section 5 of the Act after carrying out proper inquiry.

10. In the present case, the petitioner has impugned the Notice dated 24.10.2008. However, the perusal of the notice shows that the petitioner was directed to furnish the return under Section 3 of the Act within a period of 15

days of the issuance of the said notice, failing which it was directed that the assessment under Section 5(2) of the Act shall be made and the amount of cess will be recovered as arrears of land revenue. During the course of arguments, counsel for the petitioner submitted that the petitioner neither furnished the return nor did he file his reply to the said notice dated 24.10.2008 and has directly approached this Court by means of the present petition. It is also pertinent to mention here that no assessment under Section 5 of the Act has been done against the petitioner till date.

11. Under such circumstances the petitioner is directed to file his reply to the said notice as well as his objections with regard to applicability of the Act within four weeks. On petitioner filing his reply to the notice as well as his objections with regard to applicability of the Act against him, the respondent is directed to decide the same after giving proper opportunity to the petitioner to present his case.

12. With the aforesaid observations, the petition stands disposed of.