(2010) 05 AHC CK 0137

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30857 of 2010

Seema Constructions Company APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Building and Other Construction Workers Welfare Cess Act, 1996 — Section 10, 11, 2(c), 3, 4(1)(2)

Citation : (2010) 05 AHC CK 0137

Hon'ble Judges : Sunil Ambwani, J and Kashi Nath Pandey, J

Final Decision : Dismissed

Judgement

Kashi Nath Pandey, J.—Heard Sri Pankaj Srivastava, learned counsel for the petitioner.? Learned standing counsel appears for respondents.

2. By this writ petition, the petitioner, a Government contractor,? is challenging the Cess imposed under the Building and Other Construction Workers'' Welfare Cess Act, 1996, notified in the State of U.P. w.e.f. 26.3.2010.?

3. Learned counsel for the petitioner submits that under the contract with Public Works Department, he is paying minimums wages to his workers. The workers working with the petitioners are not registered as the beneficiary of the fund and thus he is not required to pay the Cess under the Act.

4. The Workers'' Welfare Cess have been notified under Section 3 of the Building and Other Construction Workers'' Welfare Cess Act, 1996.? The Act provides for levy and collection of a cess on the cost of construction incurred? by employers with a view to augmenting the resources of the Building and Other Construction Workers'' Welfare Boards constituted under the Building and Other Construction Workers''? (Regulation of Employment and Conditions of Service) Act, 1996.? The Cess prescribed under the rules under Section 2 (c), is to be levied and collected under Section 3 of the Act from the date notified by the? Central Government or State Government or Local Bodies as the case may be. Sub Section (1) of Section 4 of the requires every employer to furnish return to such officer or

authority in such manner at such time, as may be prescribed. Sub Section (2) of Section 4 provides for notice, if the person carrying on building or other construction work fails to furnish return. The assessment and recovery of cess is provided in Sections 5 and 10 and Appeal against order of assessment is provided under Section 11 of the Act.

5. In Writ Petition? (C) No. 318 of 2006, National Campaign Commtt. C.L. Labour Vs. Union of India & Others, decided on 13.1.2009, the Supreme Court directed Chief Secretaries of respective? States to implement the Act to levy and collect Cess, to implement the provisions of Building and Other Construction Workers'' (Regulation of Employment and Conditions of Service) Act, 1996, and to frame Rules under Section 62 of the Act, after consultation with the expert committee.

6. The notice dated 23.4.2010, given to the petitioner by the executive Engineer, Nirmand Khand 2, Lok Nirman Vibhag, Bulandshahar, has directed all the registered contractors to get themselves registered with the Asstt. Labour Commissioner, Bulandshahar, within a week and to deposit the? Cess at the rate of 1 % under the directions of the State Government dated 26.3.2010.?

7. The petitioner under the Act, is required to get himself registered, to file return and to pay Cess. A Cess is a tax confined to a local area for a specific object or a particular purpose. It is a form of taxation. The Cess being a tax and not a fee, there is no quid pro quo between the service rendered and the levy to maintain its validity. It is a levy imposed for special administrative expense like health cess, education cess or road cess (Shinde Brothers Vs. Dy Commissioner AIR 1967 SC 1512 [Mysore Health Cess Act 1962]).? In the present case, the Cess is being levied to augment the resources of the Building and Other Constructions Workers Welfare Boards, to look after the welfare of such construction workers working in an unorganized sector with almost no statutory protection of wages or service conditions. The petitioner has neither challenged the validity of the Act, nor has questioned its enforcement on any valid grounds. The payment of minimum? wages to the workmen under the terms of contract is not a ground on which? the Cess can be challenged. The levy and collection of the Cess in question is a welfare measure in larger public interest, with which no interference is required on the grounds taken in the writ petition.

8. The writ petition is dismissed.

