
(2011) 04 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22161 of 2011

Tanks and Tube-Wells Class-A Category Contractor

APPELLANT

Vs

Collector/District Magistrate and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Building and Other Construction Workers Welfare Cess Act, 1996 — Section 10, 11, 3, 5, 5(1)

Constitution of India, 1950 — Article 226

Citation : (2011) 130 FLR 12 : (2012) 1 LLJ 50 : (2012) 3 SLJ 348

Hon'ble Judges : S.P. Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Advocate : S.K. Pundir, for the Appellant; Amit Dubey, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Rajesh Chandra, JJ.—The present writ petition has been filed making the following prayer:

(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned recovery proceedings citation dated 4.4.2011 amounting Rs. 1,39,000/- and Rs. 1,05,600/- plus interest and recurring charge, issued /served from the office of Respondent Nos. 1 and 2 in connection with recovery certificate issued from the office of Respondent No. 3, against the Petitioner, imposing "Labor cuss" on the contract/agreement No. 2 E.E./2009-2010 dated 23.10.2009 for the contracted tender's construction cost Rs. 66 lakh, and the agreement No. 3 E.E./2009-2010 dated 23.10.2009 for contracted tender's construction cost amounting Rs. 69,50,000/- for the two different works of construction of over head tanks" and itself to quash the alleged recovery certificates, issued from the office of Respondent No. 3, in pursuance to which the impugned recovery proceedings has been initiated against the Petitioner recoverable revenue.

(ii) issue a writ, order or direction in the nature of mandamus directing the Respondent Tehsil revenue authority not to recover the alleged amount of "Labor cuss" in the penal mode, and to return back the impugned recovery proceedings, initiated against the Petitioner, as the same are not permissible against the Petitioner in the eye of law.

(iii) issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

2. From the averments made in the writ petition, it appears that the Petitioner entered into contract with the Respondent No. 4 by doing various work of construction as detailed in the contract. It further appears that Cuss under the Building and other Constructions Workers' Welfare Cuss Act, 1996 was imposed on the Petitioner. Recovery proceedings have been initiated against the Petitioner for recovery of the amount of Cuss etc. The Petitioner has thereupon filed the present writ petition seeking reliefs as mentioned above.

3. The Petitioner is impugning the imposition of Cuss under the aforesaid Act and the consequent recovery proceedings on various grounds.

Section 3 of the aforesaid Act provides for levy and collection of Cuss under the said Act.

Section 5 of the aforesaid Act deals with the assessment of Cuss.

Section 9 of the aforesaid Act provides for imposition of penalty in case of non-payment of cuss within the specified time.

Section 10 of the aforesaid Act provides that any amount due under the said Act after including any interest or penalty was from an employer may be recovered in the same manner as arrears of land revenue.

Section 11 of the aforesaid Act provides as follows:

11. Appeals -(1) Any employer aggrieved by an order of assessment made u/s 5 or by an order imposing penalty made u/s 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under Sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under Sub-section (1), the appellate authority shall, after giving the Appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any Court of law.

4. It will thus be noticed that in case an employer is aggrieved by an order of assessment made u/s 5 or an order imposing penalty u/s 9 such employer may

file appeal before the appellate authority. Thus the Petitioner in the present case has an alternative remedy of filing appeal before the appellate authority for impugning the assessment of Cuss as well as the imposition of penalty if any in respect of the Petitioner.

5. In view of the availability of the alternative remedy available to the Petitioner, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India in the present case. The writ petition is liable to be dismissed on the ground of availability of alternative remedy to the Petitioner and the same is accordingly dismissed on the said ground.

6. It is however, observed that in case the Petitioner files an appeal before the appellate authority within four weeks from today, the appellate authority will entertain the same without raising any objection on the question of limitation.