



CHHATTISGARH HIGH COURT
Hon'ble Mr. Sanjay K. Agrawal, J.
Hon'ble Mr. Sanjay Kumar Jaiswal, J.
WPC No. 4368/2021, Dt/- 21-3-2025

M/s. BNC Power Projects Ltd. & Anr.
v.
Union of India & Ors.

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996 – Section 3 – Cost of supply of equipment – Whether cost of construction of building and construction work – The petitioner company is involved in the execution of infrastructure projects and had entered into agreements for projects with respondent No. 3 for the purpose of various turnkey projects – Purchase orders were placed by respondent No. 3 reflecting that every purchase order is limited to supply of materials only – While making payment, the amount of cess of 1% was recovered and deposited with respondent No. 2 by respondent No. 3 – It was contended that levy of cess on cost of supply of equipment is arbitrary and unconstitutional – Held, the Cess Act clearly excludes supply contract from within its ambit – Mere installation and/or erection of pipelines, equipment for generation or transmission or distribution of power, electric wires, transmission towers etc. which do not involve construction work are not amenable to cess under the Cess Act – Since cess was not recoverable against supply of materials supplied by the petitioner-company, recovery of cess against the supply contract is unconstitutional and bad in law – Respondent No 2 is directed to refund the amount of cess collected from the petitioner-company *qua* the supply contract/material supplied within a period of three months but without interest – Writ petition is allowed to the extent of the order. Paras 10 to 13

For Petitioner: Mr. Ishan Verma, Advocate.

For Respondent No. 1 (UOI): Mr. Ramakant Mishra, Deputy Solicitor General of India.

For Respondent No. 2 (State): Mr. Arvind Dubey and Mr. Rahul Tamaskar, Government Advocates.

For Respondent No. 3 (NPC): Mr. Anuroop Panda, Advocate.

IMPORTANT POINTS

- **Building and Other Construction Workers' Welfare Cess Act clearly excludes supply contract from within its ambit.**
- **Mere installation and/or erection of pipelines, equipment for generation or transmission or distribution of power, electric wires, transmission towers, etc. which do not involve construction work are not amenable to cess under the Building and Other Construction Workers' Welfare Cess Act.**
- **Cess cannot be collected from the employer *qua* the supply contract / material supplied.**

JUDGEMENT

Sanjay K. Agrawal, J.–

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners herein have filed this writ petition seeking appropriate writ or direction declaring Rule 3 of the Building and Other Construction Workers' Welfare Cess Rules, 1998 (for short, 'the Rules') read with section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996 (for short, 'the Act') to the extent that it includes the cost of supply of equipment within the scope of the cost of construction of building and other construction work, as unconstitutional branding the same as arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

2. The petitioners have filed the instant writ petition on the aforesaid factual backdrop.

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3. The petitioner Company is involved in the execution of infrastructure projects. The petitioner Company has entered into agreements for the projects with respondent No. 3 for the purpose of various turnkey projects in relation to diversion/modification works of 1 No 220 KV JSPL Line crossing MGR Rail corridor from NTPC Lara to Talaipalli Mines of respondent No. 3. The petitioner Company and respondent No. 3 have entered into number of agreements from 29-11-2018 to 4-1-2019 and in lieu of the aforesaid agreements, purchase orders have been placed by respondent No. 3 and each order has been annexed with a document titled as "Scope of Work" reflecting that every purchase orders are limited only to supply of materials. While making payment, the amount of cess of 1% has been recovered in view of section 3 of the Act read with Rule 3 of the Rules and respondent No. 3 has deposited the same with respondent No. 2. It is the case of the petitioners that section 3 of the Act says that 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 and therefore cess was not recoverable which has been recovered by respondent No. 3 and deposited illegally and as such Rule 3 of the Rules read with section 3 of the Act be declared unconstitutional and the amount of cess recovered be directed to be paid to the petitioners.

4. Reply has been filed by the Union of India and the State opposing the writ petition holding that cess has been recovered strictly in accordance with law.

5. Mr. Ishan Verma, learned counsel appearing for the petitioners, would submit that the issue is no longer *res integra* and it stands authoritatively determined by their Lordships of the Supreme Court in the matter of *Uttar Pradesh Power Transmission Corporation Limited and another v. CG Power and Industrial Solutions Limited and another*, (2021) 6 SCC 15, holding that cess under the Act cannot be levied on a contract for supply of goods. In the present case, the petitioner Company has entered into several agreements with respondent No. 3 for supply of materials / goods and therefore section 3 of the Act and Rule 3 of the Rules to the extent it includes supply contract be declared unconstitutional and the amount of cess be recovered to the petitioners.

6. Mr. Ramakant Mishra, learned Deputy Solicitor General of India appearing for respondent No. 1 / Union of India, would oppose the writ petition and support the recovery of cess and submit that the Supreme Court has not declared the Rule or the Act to the extent of recovering cess as unconstitutional and only held that no cess under the Act is leviable on a contract for supply of goods.

7. Mr. Anuroop Panda, learned counsel appearing for respondent No. 3 / NTPC, would submit that the amount of cess has already been paid to the State Government as per the Act and the Rules made thereunder.

8. Mr. Arvind Dubey and Mr. Rahul Tamaskar, learned Government Advocates appearing for the State/respondent No. 2, would submit that respondent No. 3 has deposited the amount of cess in accordance with the Act and the Rules.

9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

10. The issue involved in this writ petition relates to section 3 of the Act read with Rules 3 & 4 of the Rules. The issue is no longer *res integra* and it has been decided by their Lordships of the Supreme Court in *Uttar Pradesh Power Transmission Corporation Limited* (supra) in which their Lordships have dealt with the provisions of section 14(1) of the Act read with Rules 3 & 4 of the Rules and sections 2(1)(d) & 2(1)(g) of the Act and it has been held that the statutory scheme of the Act clearly excludes a supply contract from within its ambit. Their Lordships further clearly held 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 to cess under the Cess Act and also held that supply contract is fully exempted from levy under the Act. Their Lordships observed as under:—

"51. The clear statutory scheme of the BOCW Act excludes a supply contract from within its ambit. On behalf of Respondent 1, it is pointed out that several public authorities and corporations, such as the Delhi Metro Rail Corporation and Karnataka Power Transmission Corporation Ltd., have issued instructions that no cess under the BOCW Act is leviable on a contract for supply of goods. Copies of the KPTCL Circulars dated 22-8-2012 and 28-8-2012 to this effect are annexed to the rejoinder of Respondent 1 in the High Court.



53. Cess under the Cess Act read with the BOCW Act is leviable in respect of building and other construction works. The condition precedent for imposition of cess under the Cess Act is the construction, repair, demolition or maintenance of and/or in relation to a building or any other work of construction, transmission towers, in relation inter alia to generation, transmission and distribution of power, electric lines, pipelines, etc. 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 to cess under the Cess Act. Accordingly no intimation or information was given or any return filed with the assessing officer under the Cess Act or the Inspector under the BOCW Act in respect of the first and second contracts, either by UPPTCL or by Respondent 1.

54. A contractor who enters into a pure supply contract is statutorily exempted from levy under the BOCW Act. The contract in question is a supply contract as would be evident from Clause 8.7 of the Special Conditions of Contract which states:

“The contract shall be a ‘Divisible Contract’ with single point responsibility, hence no works contract tax shall be payable and the Purchaser shall not bear any liability on this account”.

11. The decision of the Supreme Court in *Uttar Pradesh Power Transmission Corporation Limited (supra)* has been followed by the Bombay High Court in the matter of *M/s. BNC Power Projects Ltd., and another v. Union of India and others*, W.P. No. 2477/2021, decided on 17-1-2024.

12. In view of the aforesaid pronouncement of the Supreme Court and in view of the statutory scheme of the Act and the Rules made thereunder, since cess was not recoverable against supply of materials supplied by the petitioner Company, recovery of cess from the petitioner Company against the supply contract is clearly unconstitutional and bad in law. Accordingly, respondent No. 2 is directed to refund the amount of cess collected from the petitioner Company qua the supply contract / material supplied within a period of three months from today, but without interest. However, since the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 has been repealed on 28th September, 2020, by enactment of the Occupational Safety, Health and Working Conditions Code, 2020, we deem it inexpedient to consider the question of constitutional validity of Rule 3 of the Rules read with section 3 of the Act, as the Supreme Court had already held that no cess under the Act is leviable on a contract for supply of goods.

13. The writ petition is allowed to the extent indicated hereinabove and there shall no order as to cost(s).

Ref: LLR

If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333