



HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 43 of 2013

Avinash Developers Pvt. Ltd. **versus** State Of Chhattisgarh and Ors

WPT/162/2014

Order Sheet

18/02/2025	Mr. Vinod Deshmukh, Advocate along with Ms. Dayna Bajrang, counsel for the petitioner in WPT No. 43/2013. Mr. Amrito Das, counsel for the petitioner in WPT No.162/2014. Ms. Anuradha Jain, PL for the State. At the outset, learned counsel for the State submits that in both these Writ Petitions, similar ground has been raised that the Chhattisgarh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2008, was notified in the Official Gazette by the CG State Government in the year 2008 and therefore, the State has no authority to recover cess under the Building and Other Construction Welfare Cess Act, 1996 (for short, “the BOCW Act”) from the contractors particularly when the agreement has been executed prior to notification of the said

Rules. She would further submit that the said issue no longer *res integra* as the same has been decided in the matter of **A. Prabhakara Reddy and Company vs. State of Madhya Pradesh and others, (2016) 1 SCC 600**, whereby, the law has been explained that the cess on construction works under the BOCW Act should be imposed even prior to the date of constitution of the State Board. Rendering the service to the workers is not required to be a condition precedent for the levy of the cess. She further submits that the rendering of welfare services can reasonably be undertaken only after the cess is levied, collected and credited to the welfare fund and the said beneficial measures for the welfare of the workers are applicable even to the construction activity, which may have commenced before coming into force of the BOCW Act and the Cess Act, if they are subsequently covered by the provisions of these Acts and thus refers to Para-14 of the said judgment, which reads thus:-

“14.We also find no merit in other submission advanced on behalf of the appellants that there is legal impediment in charging levy on the cost of construction incurred by the employer from a particular period on account of constitution of Board from a particular date or for any other reason. This argument is fallacious. Such beneficial measures for the welfare of workers are applicable even to the construction activity which may have commenced before coming into force of the BOCW

Act and the Cess Act, if they are subsequently covered by the provisions of these Acts. There can be no legal obstacle in ignoring the construction cost incurred before the cess became leviable by distinguishing it from the cost of construction incurred later, from a date when the Board is available to render service to the Building and other construction workers. The levy of cess in these facts and circumstances cannot be faulted for any reason. The demand of cess in the given facts cannot amount to retrospective application of the Cess Act. Hence the appeals must fail.”

Mr. Das, learned counsel for the petitioner submits that in the matter of **Gammon Rizzani (JV) vs. Delhi Metro Rail Corporation Limited** in **Civil Appeal No.7141/2012** (order dated 16.11.2015), a question arose as to whether the ratio laid down in the matter of **Dewan Chand Builders and Contractors vs. Union of India, (2012) 1 SCC 101**, in which a view has been taken that the Cess Act is not applicable retrospectively, is correct or not, which is still pending consideration.

Learned counsel for the State would also agree with the same.

List this matter after 10 weeks. However, both the parties are directed that as and when any order is passed in the said matter, the copy of the same shall be filed and it shall also be brought to the notice of this Court.

<i>Priyanka</i>	Interim relief granted earlier shall continue till the next date of hearing. Sd/- (Deepak Kumar Tiwari) Judge
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