

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C.) No. 11257/2009**

% **Date of Decision: 28th August, 2009**

NATIONAL BUILDING CONSTRUCTION CORPORATION LIMITED
..... PETITIONER

! Through: Mr. K.K. Rai, Sr. Adv with
Mr. Inder Jit Singh, Advocate.

VERSUS

\$ DEPUTY LABOUR COMMISSIONER-CUM-CESS COLLECTOR, GOVT.
OF NCT OF DELHI & ANOTHER
.....RESPONDENTS

^ Through: Mr. Amitabh Marwah, Advocate.

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

The National Building Construction Corporation Limited (petitioner herein) in this writ petition seeks to challenge an order dated 02.03.2009 passed by the Competent Authority under the Building and Other Construction Workers Welfare Cess Act, 1996 directing the petitioner to pay one per cent cess amounting to Rs. 128.91 Lakhs in respect of construction work carried out from 1996 to 14.08.2005 within 15 days of the said order.

2. Mr. K.K. Rai, learned senior counsel appearing on behalf of the

petitioner, contends that the liability for payment of one per cent cess under the Building and Other Construction Workers Welfare Cess Act, 1996 accrued only in terms of the notification of the Government dated 02.09.2002 on the subject in issue. The learned senior counsel appearing on behalf of the petitioner contends that since vide impugned order, the Competent Authority under the Building and Other Construction Workers Welfare Cess Act, 1996 has assessed one per cent cess on the petitioner from 1996, the said assessment is without jurisdiction. It is further submitted by him that there is an error apparent on the face of the impugned order regarding the date from which cess could be legally assessed by the petitioner.

3. Mr. Amitabh Marwah is present on behalf of the respondents and he has raised a preliminary objection to the maintainability of the present writ petition stating that the Act provides a remedy of appeal against the impugned order.

4. At this stage, counsel for both the parties have agreed for passing of a consent order in the matter. The learned senior counsel appearing on behalf of the petitioner submits that as there is an error apparent on the face of the impugned order regarding the date from which the petitioner is liable to pay cess, the petitioner will file a review application before the Competent Authority, who has passed the impugned order and point out the error in the said order.

5. Mr. Amitabh Marwah, learned counsel appearing on behalf of

the respondents, submits that in case, any review application is filed by the petitioner, the same will be considered by a speaking order.

6. In view of the above submissions made by the counsel for the parties, this writ petition is disposed of reserving liberty for the petitioner to file a review application before the Competent Authority within two weeks and in case, any such review application is filed by the petitioner, the Competent Authority is directed to consider and decide the same by a speaking order.

AUGUST 28, 2009
'bsr'

S.N.AGGARWAL, J