

Serial No.04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.84/2023

Date of Order: 04.07.2023

Dalmia Cement (Bharat) Limited Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. N.N. Dutta, Adv

For the Respondents : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl.Sr.GA
Mr. A.H. Kharwanlang, Addl.Sr.GA

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The petitioner here claims to have been adversely affected by the imposition of illegal cess on cement by the State. Indeed, this petition is based on a judgment and order of this Court of February 9, 2022 passed in WP (C) No.280 of 2016 (*Megha Technical & Engineers Private Ltd v. State of Meghalaya*), by which the cess imposed by the Meghalaya Cement Cess Act, 2010 was found to be illegal and without authority.

2. The relevant order of February 9, 2022 provided as follows in paragraphs 15 and 16 thereof:

“15. Accordingly, WP (C) Nos.280 and 281 of 2016 are disposed of by holding that the State had no authority to impose cess in terms of the impugned Act of 2010 and by annulling the Act as ultra vires the Constitution and requiring the State to refund 20 percent of the amount realized on such count from the individual petitioners to such petitioners and investing 30 percent of the total amount of cess realised under bogus legislation for the purpose of procuring the equipment for the cancer wing of the Government General Hospital in Shillong as aforesaid.

“16. Since the refund directed to be made to the petitioners appears to be more than sufficient, no additional order is made as to costs.”

3. The order was clear and unequivocal that the refund of 20 per cent that was directed to be made by such order was to be made to the individual petitioners out of the amounts seized from them. The refund was confined to the petitioners who had challenged the imposition of the cess and was not for other manufacturers who had not challenged the impost. In any event, the manufacturers, who had passed on the levy to the end users, could not have had a claim for refund; but the token refund of 20 per cent was awarded by the relevant order of February 9, 2022 by way of costs that may have been incurred by the petitioning manufacturers who had assailed the imposition of the cess.

4. A similar petition as the present one came to be decided on June 16, 2023 in WP (C) No.180 of 2023 (*Hills Cement Company Limited v. State of Meghalaya*). Such order of June 16, 2023 clearly recorded as follows at paragraph 6 thereof:

“6. In view of the clear words of the relevant order of February 9, 2022, the State was under no obligation to respond to the petitioner or to consider the petitioner’s request since the token refund was confined to the petitioners who had challenged the statute and the order did not extend the same benefit to other similarly placed manufacturers.”

5. For the reasons indicated above and since this petitioner was not entitled to any benefit under the order of February 9, 2022, WP (C) No.84 of 2023 is dismissed.

6. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya

04.07.2023

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