

Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.180/2023

Date of Order: 16.06.2023

Hills Cement Company 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. K. Paul, Sr.Adv with
Mr. S. Chanda, Adv

For the Respondents : Mrs. N.G. Shylla, 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)

This petition is squarely 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. However, since the manufacturers of cement in the State must have passed on the illegal impost to the ultimate consumers, on the basis of the principle of unjust enrichment, the illegally collected cess could not be required to be refunded to the manufacturers since the persons who

actually paid therefor would not have been possible to identify. Accordingly, since a part of the hit due to the increased price of their product must have been taken by the manufacturers, a ball-park figure of 20 per cent was required to be refunded to the petitioners who had challenged the cess and the validity of the Act.

3. Indeed, paragraphs 15 and 16 of the relevant order make the position sufficiently clear:

“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.”

4. As far as the manufacturers were concerned, the refund of 20 per cent was directed to be made to the individual petitioners out of the amounts realised from them. The order is clear in that it refers specifically to the petitioners who had challenged the validity of the statute and it is not an order made for all other manufacturers similarly placed as the petitioners in that case. Further, paragraph 16 amplified that the refund was also to cover a substantial part of the costs incurred by the petitioners in prosecuting the challenge to the relevant statute.

5. The petitioner herein claims to be similarly placed as other cement manufacturing companies. The grievance of the petitioner is that on the basis of the said order of February 9, 2022, the petitioner appealed to the State to refund 20 per cent of the cess paid by the petitioner under the said Act of 2010, but the State has not responded thereto.

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.

7. For the reasons aforesaid, there is no merit in the present petition and WP (C) No.180 of 2023 is dismissed. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
16.06.2023
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