

Court No. - 17

Case :- WRIT - C No. - 1003186 of 2006

Petitioner :- U.P.Pollution Control Board Lucknow Through Member Secy.

Respondent :- Cess Appellate Committee U.P.Pollution Control Board And Anr.

Counsel for Petitioner :- Sudeep Kumar,A.K.Verma

Counsel for Respondent :- Smita Chitranshi

Hon'ble Alok Mathur,J.

1. Heard Sri A.K. Verma, learned counsel for the petitioner as well as Ms. Smita Chitranshi, learned counsel appearing for respondent no. 2.

2. By means of present writ petition the petitioner has assailed the order dated 06.09.2005, passed by the Cess Appellate Committee, U.P. Pollution control Board whereby the appeal preferred by respondent no. 2 has been allowed and matter has been remitted to the Prescribed Authority for assessment afresh.

3. It has been submitted by learned counsel for the petitioner that as per Water (Prevention & Control of Pollution) Cess Act, 1977 (hereinafter referred to as "the Cess Act, 1977), it was provided for collection of cess on water consumed by the person carrying on certain industries and by local authorities with a view to augment resources of the Central Board/State Board for prevention and control of water pollution. Under Section 2(c) of the Cess Act, 1977, specified industries have been described by which descriptions have been given in Schedule-1 of the Cess Act, 1977. The Legislature amended the Cess Act, 1977 by means of amendment Act, 2003, and by means of the said amendment, definition of the Industry in the principal Act has been amended to any industry which consumes water and gives rise of sewage effluent.

4. The Schedule-1 of the Cess Act, 1977 contains list of industries. Respondent no. 2 namely M/s Indian Telephone Industry Limited, is claimed by petitioner to be a chemical industry as provided at item no. 1 of Schedule-1 under Section 2(c) of the Cess Act, 1977, treating respondent no. 2 to be a chemical industry the Board levied cess on water consumed by respondent no. 2. Respondent no. 2 has objected to the assessment made in this regard and stated that their industry is not referred in the provisions of the Cess Act, 1977 and it was

basically an Engineering Industry and was not liable to be put to cess on water consumption.

5. Rejecting the objections raised by respondent no. 2, the Prescribed Authority had levied cess by means of order dated 15-16.10.2004. It is against the said assessment that the respondent no. 2 had preferred an appeal before the appellate authority which has been allowed by means of impugned order dated 06.09.2005 and remanded the matter to the Prescribed Authority.

6. It is submitted by learned counsel for the petitioner that respondent no. 2 is infact a chemical industry and not an engineering industry and submits that there was no infirmity in the order passed by the Prescribed Authority and consequently there was no reason for the appellate authority to interfere in the assessment order. When confronted with the question as to when the matter has been remitted to the assessing authority for decision afresh where the petitioner as well as respondent no. 2 would be at liberty to raise various issues alongwith their evidence as to indicate the nature of respondent industry, which can be appropriately assigned to respondent no. 2, learned counsel for the petitioner fairly submits that this aspect of the matter can be adequately looked into by the Prescribed Authority in remand proceedings, but submits that same may be directed to be decided expeditiously.

7. In the light of above facts and also considering the fact that matter has been remanded to the assessing authority for decision afresh, no interference is required by this Court in the matter under Article 226/227 of the Constitution of India. Considering that matter is with regard to assessment year 01.10.2002 - 31.03.2004, let appropriate orders be passed by the assessing authority expeditiously, say within a period of three months from the date of production of certified copy of this order, in accordance with law.

8. Both the parties undertake to cooperate in the proceedings before the assessing authority/prescribed authority.

9. With above directions and writ petition stands **disposed of**.

Order Date :- 8.12.2023

A. Verma

(Alok Mathur, J.)