

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

WP(C).No. 17273 of 2015 (H)

PETITIONER:

**C.S.SURESH BABU, AGED 55 YEARS,
S/O.C.K.SREENIVASAN, SREE SKY BUILDERS,
8 K AGENDA APARTMENTS, KOORKENCHERY,
THRISSUR DISTRICT - 680 007.**

**BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE**

RESPONDENT(S):

- 1. THE DISTRICT LABOUR OFFICER,
OFFICE OF THE DISTRICT LABOUR OFFICE,
AYYANTHOLE, THRISSUR - 680 003.**
- 2. THE DEPUTY TAHSILDAR(RR),
THRISSUR - 680 001.**
- 3. THE VILLAGE OFFICER,
THRISSUR VILLAGE, THRISSUR - 680 001.**

***ADDL. R4 IMPEADED**

- 4. KERALA BUILDING AND OTHER CONSTRUCTION
WORKERS WELFARE BOARD, THIRUVANANTHAPURAM.**

**ADDL. R4 IS IMPEADED AS PER ORDER
DATED 17.6.2015 IN IA.7978/2015.**

**R1 TO R3 BY GOVERNMENT PLEADER SRI.RANJITH
ADDL.R4 BY ADV. SRI.ASHIK K.MOHAMED ALI,SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE PHOTOCOPY ATTACHMENT NOTICE DATED 23.7.2013.
- EXT. P2 : TRUE PHOTOCOPY OF APPEAL PREFERRED BY THE PETITIONER
DATED 15.7.2014.
- EXT. P3 : TRUE PHOTOCOPY OF JUDGMENT DATED 1.8.2014 IN
W.P(C)NO.19359/2014.
- EXT. P4 : TRUE PHOTOCOPY OF NOTICE DATED 21.10.2014 ISSUED BY THE
1ST RESPONDENT.
- EXT. P5 : TRUE PHOTOCOPY OF RECEIPT DATED 22.11.2014.
- EXT. P6 : TRUE PHOTOCOPY OF LETTER DATED 19.12.2014.
- EXT. P7 : TRUE PHOTOCOPY OF LETTER DATED 6.11.2014.
- EXT. P8 : TRUE PHOTOCOPY OF ORDER DATED 21.5.2015 OF THE
1ST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.17273 of 2015

.....
Dated this the 7th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P8 order of the 1st respondent that rejects an appeal preferred by the petitioner under the Building and Other Construction Workers Welfare Cess Act, 1996, on the ground that, the petitioner did not pay the cess amount together with interest thereon, as also the appeal fees for maintaining an appeal before the appellate authority. It is the contention of the petitioner in the writ petition that, as per the statutory provisions, the pre-condition for filing an appeal is only that the appeal should be accompanied with a certificate from the cess collector to the effect that the amount of cess or penalty or both relating to the appeal has been deposited and further, that the fee equivalent to 1% of the amount in dispute or penalty or both as the case may be is deposited. It is therefore contended that inasmuch as Ext.P8 order has been passed dismissing the appeal for non-payment, inter alia, of the interest amounts that had accrued on the cess amount that remained outstanding from the petitioner, the same was illegal and against the statutory provisions.

2. I have heard the learned counsel for the petitioner and the

learned Standing counsel for the additional 4th respondent Board. I have also heard the learned Government Pleader on behalf of respondents 1, 2 and 3.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the statutory provisions governing the filing of an appeal against the order of assessment made under the Act are to be found in Section 11 of the Building and Other Construction Workers Welfare Cess Act, read with Rule 14 of the Building and Other Construction Workers Welfare Cess Rules, 1998, the said provisions read as under:

“Section 11:

11. Appeals:- (1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

Rule 14:

14. Appeal:- (1) An employer aggrieved by an order of the assessment made under rule 7 or by an order imposing penalty made under rule 12 may appeal against such order, within three months of the receipt of such order, to the Appellate Authority.

(2) The appeal shall be accompanied with-

- (a) the order appealed against;
- (b) a certificate from the cess collector to the effect that the amount of cess or penalty or both, as the case may be, relating to such appeal has been deposited;
- (c) a fee equivalent to one per cent of the amount in dispute or penalty or both, as the case may be, under such appeal;
- (d) a statement of points in dispute;
- (e) documentary evidence relied upon.

(3) On receipt of the appeal the Appellate Authority may call from the Assessing Officer a statement on the basis of his assessment order appealed against, as such Appellate Authority may consider necessary for the disposal of such appeal.

(4) The Appellate Authority shall give the appellant an opportunity of being heard in the matter and dispose of the appeal as expeditiously as possible.

(5) On being satisfied on the quantum of cess the Appellate Authority shall confirm the order of the Assessing Officer or if in his opinion the assessment was wrong or on the higher side shall modify the order of assessment or if in his opinion the assessment is on the lower side or if the basis of assessment is wrong, it shall remand back the assessment order to the Assessing Officer along with his observations to rectify the wrong.

(6) An order remand back under sub-rule (5) shall be disposed of by the Assessing Officer within

one month in view of the observations made by the Appellate Authority:

Provided that if the amount of cess is proposed to be enhanced to assessee shall be given an opportunity of being heard.

(7) No appeal shall lie against the order of the Appellate Authority under this rule.

(8) If the Appellate Authority is of the opinion that quantum of penalty imposed is on the higher side or not correctly made it shall suitably modify or set aside the order of the Assessing Officer, as the case may be.

(9) The appeal under this rule shall be disposed of by making a speaking order and a copy of such order shall be sent to each of the appellant, the Assessing Officer and the Board within five days of the date on which such order is made.

(10) An order in appeal reducing the amount of cess shall also ask the Board to refund the excess cess.

(11) An order in appeal reducing, enhancing or confirming the orders of penalty, as the case may be, shall also specify the date by which the amount of penalty should be paid/refunded."

4. It will be seen on the joint reading of Section 11 and Rule 14 extracted above that the statutory provisions provide only for a conditional right of appeal. One of the conditions required for maintaining an appeal against an order of assessment is that the assessee is required to pay the amount of cess or penalty or both as the case may be relating to such appeal. He has also to deposit 1% of the amount in dispute or penalty or both as the case may be as an appeal fee. It is evident therefore that the deposit contemplated

under the statutory provisions is only of the cess and penalty and not any further amount by way of interest on the said amounts. The rejection of the petitioner's appeal on the ground that the interest amount accrued on the cess amounts outstanding, also had to be reckoned while determining the amounts that had to be deposited for maintaining an appeal is therefore clearly against the statutory provisions. I, therefore, quash Ext.P8 order and direct the 1st respondent to consider the appeal preferred by the petitioner against the assessment order afresh, and on merits, provided the petitioner complies with the requirements in Rule 14 of the Building and Other Construction Workers Welfare Cess Rules subject to the clarification given in this judgment. The 1st respondent shall pass fresh orders as directed within a period of three months from the date of receipt of a copy of this judgment after hearing the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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