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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1014 of 2013**

M/s S.K.Samanta & Co. (P) Limited, having its Registered office at Suite 4A, 2/5, Sarat Bose Road, Kolkata-700020 and its Site Office at Bhilai Steel Plant, Bhilai, District – Durg (C.G.)

---- Petitioners**Versus**

1. State of Chhattisgarh, through the Secretary, Labour Department, Mantralaya, Raipur (C.G.)
2. Assistant Labour Commissioner – cum-Registration Officer under the Building and other Construction Workers Act, 1996, Raipur, District Raipur (C.G.)
3. Steel Authority of India Limited (A Government of India Enterprise), having its Registered Office at Ispat Bhawan, Lodi Road, New Delhi -110 003 (C.G.)
4. M/s Heavy Engineering Corporation Limited, having its registered office at Plant Plaza Road, P.O./P.S. Dhurwa, Ranchi-834-004 (Jharkhand)

---- Respondents

For Petitioner	:	Shri Siddhardh Rathod, Advocate.
For State	:	Shri Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/12/2017**

Heard.

(1) Learned counsel appearing for the petitioner would submit that issue involved in this writ petition is covered by order passed by the coordinate bench of this Court in Writ Petition (T) No.7503 of 2010 {**Arasmeta Captive Power Company Pvt. Limited Vs. State of Chhattisgarh & others**}, decided on 18th November, 2016, in which this Court has formulated the question for consideration in paragraph 3 of order, which reads as under:-

“3. The main contention of the Petitioners is that since the Petitioners are registered under the Factories Act, 1948 and the rules made thereunder i.e. the Chhattisgarh Factories Rules, 1962, in terms of provisions of Section 2(1)(d) of the BOCW Act, they are excluded and exempted from the provision of the BOCW Act.”

His Lordship has answered the said question in paragraphs 11 & 12 of the order, which read as under:

“11. In case of those Petitioners who are not registered, I feel that interest of justice would be served if they are granted two months time to apply for registration. The Registering Authority is directed to ensure that within a period of six weeks from the date of application for registration, the registration shall be completed. Within one month of the registration of the Petitioners, they must file their return and the return shall not be treated to be delayed in case it is filed within the time granted by the Court. Thereafter, assessment shall be made as per the provisions of law.

12.In case of those petitioners who are already registered under the BOCW Act, they are directed to file their return within two months from today and if the return are filed within two months, then the Assessing Officer shall deal with their return in accordance with law. Needless to say that the Assessee/employer shall be given an opportunity of hearing. Since it is not disputed that the demand notices issued and recoveries made till now have been made without making assessment in terms of Section 5 of the BOCW Cess Act, *prima facie*, these orders are not in accordance with law. This Court

has issued directions to start *de novo* proceedings and therefore no recovery shall be made on the basis of the old notices. In those cases, where recovery of cess has already been made, after assessment order is passed, in case the amount assessed is less than the amount recoverable, then balance amount shall be paid back to the concerned Petitioner(s) alongwith interest at the rate of 12% per month from the date of deposit till payment is made.”

Therefore, instant writ petition may be disposed of in terms of paragraphs 11 and 12 of the aforesaid order.

(2) In view of above, the writ petition stands disposed off in terms of paragraphs 11 & 12 of the order passed by the coordinate Bench of this Court in W.P (T) No.7503/2010 { **Arasmeta Captive Power Company Pvt. Limited (supra)**}.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

