NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 14 of 2017

M/s Raipur Power & Steel Limited through the Director Sandeep Kumar Agrohia S/o Ranbir Singh, aged about 28 years, M/s Raipur Power & Steel Limited, Plot No. 75- 76, Industrial Growth Center Borai, Rasmada, Tahsil and District Durg (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Labour Welfare Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)

2. Secretary, Chhattisgarh Building and Other Construction Workers Welfare Board, Raipur, District Raipur (Chhattisgarh)

3. Assessing Officer, Building and Other Construction Workers Welfare Cess Act 1996 and Deputy Director, Industrial Health and Security, Durg Division, District Durg (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Shakti Raj Sinha, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16.01.2017

The present petition with the consent of the parties is being disposed of at motion stage.

2. The petitioner in the present case is challenging the order dated 05.01.2017 passed by the Secretary, Chhattisgarh Building and Other Construction Workers Welfare Board, Raipur (for short 'CGBOCW Board') whereby the revision petition under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (for short 'the Act of 1996') preferred by the petitioner against the order dated 15.12.2015 passed by the Cess Assessment Officer, CGBOCW Board who is also the Deputy Director, Industrial Health and Security, Durg has been rejected.

3. Facts of the case in brief are that the petitioner in the present case is a registered firm under the Factories Act and is involved in the business of iron and steel. A notice dated 04.12.2015 for depositing cess under the Act of 1996 was issued to the petitioner by respondent no.3. The petitioner vide the said notice was also directed to enter appearance before the Authority and submit his reply on 14.12.2015 at 11 a.m. On 14.12.2015 the petitioner appeared before the Authority concerned and sought for a short adjournment so that the necessary details could be produced before the authority with which the assessment could have been made. The time was sought for on the ground that the audit was going on in the petitioner's establishment. However, the Authority concerned without granting any opportunity for producing the documents straightaway on the very next day vide its order dated 15.12.2015 passed the order assessing Rs.2,16,90,030/- to be paid within a period of 15 days. Against the said order, the petitioner preferred a revision petition before the Secretary, CGBOCW Board i.e. respondent no.2 which also got rejected vide order dated 05.01.2017 leading to the filing of this petition.

4. At the outset counsel for the petitioner submits that he does not want to contest the case on merits and prays that if the petitioner is granted sometime, he would produce all the necessary documents with which the reassessment can be made and thereafter a fresh order may be passed. Counsel for the petitioner very fairly submits that the petitioner establishment is ready to deposit the assessment amount as is ordered by the Assessing Officer, however, prays only for a proper assessment to be made.

5. State counsel however, opposes the petition on the ground that it is a case where proper assessment has been made and the petitioner herein had only sought time for depositing the assessed amount and therefore, the petitioner now cannot seek for reassessment of the said amount. He further submits that once when the petitioner is ready for compliance of the assessment order, there is no scope for reassessment of the said claim put forth by the petitioner.

6. Having considered the contentions put forth by the counsel appearing on either side and on perusal of the record all that this Court at this juncture is adjudicating upon is the manner in which the Assessment Officer has passed the impugned order. Sub Clause 4 of Rule 7 of the Act of 1996 clearly stipulates that:

> "7. (4) On receipt of such notice the employer shall furnish to the Assessing Officer a reply together with copies of documentary or other evidence in support of his claim, within fifteen days of the receipt of the notice:
>
> Provided that the Assessing Officer may, in the course of assessment, afford an opportunity to the assessee to be heard in person, if he so requests to substantiate his claim."

7. A plain reading of this provision itself is very clear that the assessment Officer while issuing notice should have mandatorily granted at least 15 days time to the Assessee for submission of the relevant documents with which the assessment could be done. Undisputedly, the notice in the present case was issued on 04.12.2015 and if 15 days period is calculated, it comes on 19th December, 2015 not before that. However, in the instant case only 10 days time was granted. The matter was put for hearing on 14th of December,15 on which date the petitioner entered appearance and sought time for producing documents. However, the Authority concerned passed the order on the very next day i.e. on 15.12.2015. Thus, this Court finds that the Authority concerned was in a haste for the reasons best known to him to conclude the matter. This Court does not see any good reason for not granting at least 15 days period to the petitioner as is required under Sub clause 4 of Rule 7 of the Act of 1996. Further, when the petitioner appeared on the first date of hearing and moved an application seeking for an adjournment, the Authority concerned should have granted a short adjournment by which the petitioner could have submitted the necessary documents for assessment. This also has not been done by the Authority concerned and therefore the order dated 15.12.2015 Annexure P-2 is not sustainable and deserves to be and is accordingly quashed.

8. This aspect and requirement of law has also not been tested or dealt with by the respondent no.2 while passing the impugned order and for the said reason, the impugned order dated 05.01.2017 is not sustainable and the same stands set aside.

9. Accordingly, the matter is remitted back to the Assessing Authority with a direction that the petitioner to produce all the relevant documents on the basis of which the assessment can be made on 15th of February, 2017 and the Assessing Authority shall proceed further and pas an order afresh taking into consideration the documents brought before it. It is made clear that the petitioner shall not be given any further time under any circumstances for submission of the documents on the basis of which assessment has to be made. In case, the petitioner fails to produce the documents on the said date, the Assessing Authority would be at liberty to proceed further and pass an order on the basis of the documents available on record.

Sd/-
P. Sam Koshy
Judge

Bhola