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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1227 of 2017

M/s Raipur Power And Steel Limited, Plot No.75-76, Industrial Growth, Center Borai, Rasmada, District – Durg (C.G.) Through: Its Diector Balraj Garg, S/o Shri Ram Garg, Aged about 43 years, R/o Wallfort City Ring Road, Raipur, District-Raipur (C.G.)

----Petitioner

Versus

1. State of Chhattisgarh, Throug- Secretary, Department of Labour, Indrawati Bhawan, Naya Raipur, District – Raipur (C.G.)

2. Appellate Authority Building and Other Construction Workers Welfare Cess Act, 1996, P-3, C-244-45, Housing Board Colony, Sector 27, New Raipur, District Raipur (C.G.)

3. Assessing Officer, Building and Other Construction Workers Welfare Cess Act, 1996, Office of Deputy Director, Industrial Health & Safety 101, Housing Board Apartment, Raipur Naka, Durg Division, District Durg (C.G.)

4. Collector Durg, District – Durg (C.G.)

---- Respondents

For Petitioner : Mr. Rajneesh Singh Baghel, Advocate.
For State : Mr. Anand Dadariya, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/07/2018

(1) This writ petition is directed against the order dated 31.03.2017 passed by Appellate Authority dismissing the appeal preferred under Rule 14 of The Building and Other Construction Workers' Welfare Cess Rules, 1998 (henceforth "Rules, 1998") for want of non-compliance of Rule 14 (2)(b)(c) of the Rules, 1998.

(2) Mr. Baghel, learned counsel appearing for the petitioner would submit that the impugned order is unsustainable and bad in law and he would rely upon the decision of this Court rendered in the matter of **Larsen and Toubro Limited Vs. State of Chhattisgarh & others**[1]**,** therefore, impugned order is liable to be set aside.

1 WPC No. 2636 of 2010, decided on 16.02.2018

(3) On the other hand, learned counsel for the State would submit that Rule 14(2)(b)(c) of the Rules, 1998 is mandatory in nature and non-compliance thereof is fatal in nature and, therefore, appeal has rightly been dismissed.

(4) I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(5) Rules 14(1) and 14(2) of Rules of 1998 provides as under:-

> "**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 free 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."

(6) A careful perusal would show that the certificate of Cess Collector certifying that employer deposited the amount of cess, is imperative. It is necessary to deposit a fee equivalent to one percent of amount in dispute and the appeal has to be accompanied with the said certificate and deposit.

(7) In the case in hand, neither the certificate of Collector Cess after depositing the cess involved in the appeal nor fee to the extent of 1% of the amount in dispute was deposited while filing the appeal. The provisions contained in Rule 14(2)(b)(c) of Rules, 1998 is imperative in nature, though consequence of non-compliance of above stated Rules is not provided in the Rules.

(8) Thus, in view of non-compliance of Rule 14(2)(b)(c), the appellate authority is justified in dismissing the appeal. I do not find any error in the order impugned warranting

interference by this Court in the instant writ petition.

(9) Faced with this difficulty, learned counsel for the petitioner would submit that order of assessing officer is without jurisdiction and without authority of law.

(10) The petitioner challenged the order of Assessing Authority by filing statutory appeal, which has been dismissed for non-compliance of mandatory deposit, therefore, now the petitioner cannot question the order of Assessing Officer, which has already merged into appellate order while questioning the appellate order and as such challenge to appellate order is held to be unsustainable in law.

(11) Consequently, I do not find any merit in the instant writ petition. The writ petition deserves to be and is accordingly dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-