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WPA 9932 of 2023

Universal MEP Projects & Engineering Services Limited
& Anr.

Vs

Union of India, The Director General (Inspection), And
General Labour Commissioner, Ministry of Labour and
Employment & Ors.

Mr. Abhratosh Majumdar Ld. Sr. Adv.,
Mr. Pranit Bag,
Mr. Prithwish Roy Chowdhury,
Mr. Aritra Deb,
Ms. Roshni Deepta Acharya

... For the Petitioners.

Mr. Partha Sarathi Mullick

... For the Respondent No.3.

Ms. Susmita Saha Dutta

... For the UOI.

Mr. A. Ray, Ld. GP.,
Mr. T.M. Siddiqui,
Mr. S. Sanyal

... For the State.

Heard learned Advocates appearing for the
respective parties.

Petitioners have filed this writ petition being
aggrieved by the action of the Kolkata Metro Rail
Corporation Limited/respondent No.3 deducting cess
under the Building and other Construction Workers'
(Regulation of Employment and Conditions of Service)
Act, 1996 and the Building and other Construction
Workers' Welfare Cess Act, 1996, and the letter issued
by the said authority dated 8th February, 2023 being
Annexure P-16 to the writ petition and the show-
cause-notice dated 9th March, 2023 being Annexure P-
18 to the writ petition issued by the office of the

Labour Enforcement Officer (C), Ministry of Labour and Employment, Government of India. Petitioners submit that the nature of work and activities carried out by the petitioners does not come within the definition of “building or other construction works” as contained in Section 2(d) of the aforesaid Act. In addition, petitioners also rely on a decision of the Hon’ble Supreme Court in the case of Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another reported in (2021) 6 Supreme Court Cases 15 and particularly on paragraph 53 of the said judgment.

Considering the provision of aforesaid Section 2(d) of the Act I am of the considered view that prima facie the nature of work carried out by the petitioners does not fall within the definition of Section 2(d) of the aforesaid Act and also in view of the decision of the Hon’ble Supreme Court in the case of Uttar Pradesh Power Transmission Corporation Limited and Anr.(supra) particularly paragraph 53.

Mr. Siddiqui, learned Additional Government Pleader representing the State does not deny and dispute about the applicability of the aforesaid judgment of the Hon’ble Supreme Court in the case of the petitioners.

In the facts and circumstances of the case and submission of the parties this writ petition being WPA 9932 of 2023, is disposed of by directing the petitioners to give reply/objection to the impugned notice dated 8th February, 2023 being Annexure P-16 to the writ petition issued by the respondent No.3 and to the impugned show-cause-notice dated 9th March, 2023, issued by the office of the Labour Enforcement Officer(C), Ministry of Labour and Employment, Government of India being Annexure P-18 to the writ petition, within four weeks from date and the same shall be considered by the aforesaid authorities in accordance with law and by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioners or its authorised representative and after taking into consideration the aforesaid judgment of the Hon'ble Supreme Court in the case of Uttar Pradesh Power Transmission Corporation Limited and Anr(supra), within a period of four weeks from the date of receipt of such replies/objections to the aforesaid notices.

Till the final decision of both the aforesaid authorities are taken on the replies/objections to the aforesaid notices, the respondent No.3, shall not make any further deduction of cess at source. Any further deduction will depend upon the final outcome of the

orders to be passed on the replies/objections to the aforesaid notices.

Needless to mention that at the time of hearing of by both the authorities, petitioners shall be entitled to take all the points raised in this writ petition.

If petitioners fail to file objections within the time stipulated herein this interim protection will not have any force.

(Md. Nizamuddin, J.)