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W.P.No.21157 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21157 of 2017
and
W.M.P.Nos.22032 & 22033 of 2017

M/s.KCP Engineers Pvt., Ltd.,
Rep. By its Managing Director,
K.Chandraprakash,
S/o.Krishnakumar,
117-B, Periyar Nagar,
Puliyakulam,
Coimbatore – 641 045.

...Petitioner

Vs.

1.State of Tamil Nadu,
Rep. By its Additional Chief Secretary
to Government,
Highway and Minor Ports Department,
Secretariat,
Chennai – 9.

2.The Chief Engineer,
National Highways,
HRS Campus, 76, Sardharpatel Road,
Guindy, Chennai – 600 025.

3.The Superintending Engineer,
National Highways, Omalur Main Road,
Narasothipatty, Alagapuram (PO)
Salem – 636 004.

..Respondents



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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in Memo No.Kanakku/The. Ne/MGL/55/2017 on the file of the 2nd respondent dated 25.04.2017 and the consequential order passed by the 1st respondent in Letter No.6298/HV1/2017-3 dated 25.07.2017 quash the same and direct the respondents to refund the amount already deducted from the petitioner in the name of contribution to the Manual Workers Fund Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994.

For Petitioner : Mr.V. Elangovan

For R1 to R3 : Mr.S.Silambanan
Assisted by
Mr.Abishek Murthy
Government Advocate

ORDER

The order passed by the 1st respondent in letter dated 25.07.2017, deducting a sum of Rs.6,10,585/- from the Bills of the petitioner/Contractor in line with the provisions of the agreement and as per Section 3 of the Building and other Construction Workers Welfare Cess Act, 1996, (Central Act, 28 of 1996) [hereinafter referred to as 'Cess Act'] is under challenge in the present writ petition.



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2. It is not in dispute that the petitioner was awarded with the contract and he is a Class-I Contractor. The work of “Improvements of riding quality from KM.335/0 to KM.340/0 of NH-67” was awarded to the writ petitioner and the petitioner has completed the work. While settling the bills, the respondents recovered a sum of Rs.6,10,585/- from the petitioner based on the agreement, which was entered into between the petitioner and the respondents in consonance with the Cess Act, 1996.

3. The learned counsel for the petitioner states that the Contractor is not liable to pay the Cess as stated in the impugned order and therefore, the order is to be quashed.

4. The learned counsel for the writ petitioner relied on the Notification issued under Sub-Section (1) to Section 8-A of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982.

5. The learned Additional Advocate General appearing on behalf of the respondents drew the attention of this Court that the Cess was recovered not under the Tamil Nadu Manual Workers (Regulation of Employment and



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Conditions of Work) Act, 1982, but was deducted based on Section 3 of the Building and other Construction Workers Welfare Cess Act, 1996, (Central Act, 28 of 1996). Therefore, the State has to deduct the cess under the Central Act and deposit the same to the accounts of the Central Government. Therefore, the contention of the petitioner is incorrect.

6. That apart, the learned Additional Advocate General appearing on behalf of the respondents drew the attention of this Court with reference to the conditions stipulated in the agreement entered into between the 'State' and the petitioner/contractor and the said condition reads as under:

“q. As per workers welfare cess act 1996 inter-alia stipulating that there shall be levied and collected a cess for the purpose of the Building and other construction workers (Regulation of Employment and Conditions of Service) Act 1996, at such rate not exceeding two percent but not less than one percent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify (ref.sub-section (1) of section (3) of the said Act)”



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7. In view of the fact that the petitioner agreed to pay the said amount as per the Central Act, which was deducted, the claim of the petitioner deserves no merit consideration. If at all any agreements between the petitioner and the respondents exists otherwise, the petitioner is at liberty to approach the competent Forum.

8. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

17.04.2023

Index : Yes
Speaking order
Neutral Citation: Yes
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To

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Chennai – 9.

2. The Chief Engineer,
National Highways,
HRS Campus, 76, Sardharpatel Road,
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S.M.SUBRAMANIAM, J.

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