



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 8493 of 2010 alongwith CWP Nos. 4553, 6416, 6417, 7676, 7678 of 2012 & CWP Nos. 878, 2175 and 9837 of 2013 & CWP No. 4069, 4205, 5347, 5388, 6189, 6264, 6699, 7134 of 2014 and CWP Nos. 1236, 1326, 2423, 3801 of 2015 and CWP No.1754 of 2019.

Reserved on: 15th December, 2023.

Date of decision: 5th January, 2024.

1. CWP No. 8493 of 2010.

Greenko Budhil Hydro Power Pvt. Ltd.
Versus

...Petitioner.

State of H.P. & Ors.

....Respondents.

2. CWP No.4553 of 2012.

M/s DSL Hydrowatt Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

3. CWP No.6416 of 2012.

Neogal Power Company Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

4. CWP No.6417 of 2012.

Awa Power Company Pvt. Ltd.

.....Petitioner.

vs.

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State of H.P. & Ors.

....Respondents.

5. CWP No.7676 of 2012

IQU Power Company Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

6. CWP No.7678 of 2012.

Luni Power Company Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

7. CWP No. 878 of 2013.

M/s Sarabai Enterprises (P) Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

8. CWP No.2175 of 2013.

Sahu Hydro Power Private Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

9. CWP No.9837 of 2013

M/s Batot Hydro Power Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

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10. CWP No.4069 of 2014

M/s Saini Techno Construction (P) Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

11. CWP No.4205 of 2014.

M/s Tangling Mini Hydel Power Project

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

12. CWP No. 5347 of 2014.

M/s Regent Energy Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

13. CWP No.5388 of 2014.

Cimaron Constructions Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

14. CWP No.6189 of 2014.

Tarela Power Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

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15. CWP No.6264 of 2014.

Ginni Global Limited

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

16. CWP No.6699 of 2014.

AT Hydro Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

17. CWP No.7134 of 2014.

Tejassarnika Hydro Energies Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

18. CWP No.1236 of 2015

M/s Chir Chind Hydro Power Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

19. CWP No.1326 of 2015.

M/s Raheja Hydel Power Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

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20. CWP No.2423 of 2015.

M/s Lanco Thermal Power Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

21. CWP No.3801 of 2015

Rangaraju Warehousing Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

22. CWP No.1754 of 2019

Premier Alcobev Pvt. Ltd.

.....Petitioner.

vs.

State of H.P. & Ors.

....Respondents.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ No.

For the Petitioner(s):

Mr. Rajnish K. Maniktala, Sr. Advocate, Mr. B.N. Mishra, Sr. Advocate with Mr. Naresh K. Verma, Advocate, Mr. Ajay Vaidya, Advocate, Mr. Sunil Mohan Goel, Advocate, Ms. Shalini Thakur, Advocate and Mr. Atul Jhingan, Advocate.

¹ Whether reporters of the local papers may be allowed to see the judgment?

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For the Respondents:

Mr. I.N. Mehta, Sr. Addl. A.G. with Mr. J.S. Guleria and Mr. Rohit Sharma, Deputy Advocate Generals, for the respondents-State.

Mr. Virbahadur Verma, Central Government Counsel, for Union of India.

Mr. Aman Sood, Ms. Priyanka Verma, Mr. Vikrant Thakur and Mr. Neeraj Sharma, Advocates, for the respective private respondents in the respective petitions.

Satyen Vaidya, Judge.

CMP No. 14132 of 2021 in CWP No. 8493 of 2010.

The application is allowed being not opposed. Greenko Budhil Hydro Power Private Ltd., Plot No.4, Software Units Layout, HITEC City, Madhapur, Hyderabad, Telangana, through Mr. Vinod Thakur, Assistant Manager is ordered to be impleaded as petitioner in place of original petitioner namely Lanco Budhil Hydro Power Ltd. (formerly known as Lanco Green Power Pvt. Ltd.) with its registered office at; Lanco House No.141, L.V. Prasad Marg, Banjara Hills, Hyderabad-500034 (Andhra Pradesh) through its Attorney Sh. Nilesh

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Sharma. Amended memo of parties has been filed and is taken on record.

CWP No. 8493 of 2010 alongwith CWP Nos. 4553, 6416, 6417, 7676, 7678 of 2012 & CWP Nos. 878, 2175 and 9837 of 2013, CWP No. 4069, 4205, 5347, 5388, 6189, 6264, 6699, 7134 of 2014 and CWP Nos. 1236, 1326, 2423, 3801 of 2015 and CWP No.1754 of 2019.

2. All these petitions are being decided by a common judgment as common questions of facts and law are involved.

3. Petitioners in all the petitions are generating companies as defined in Section 2(28) of the Electricity Act, 2003. They own their respective generating stations, which have been constructed during different periods of time.

4. The Labour Officer-cum- Cess Collector-cum- Assessing Officer (Under the Building and other Construction Workers Welfare Cess Act, 1996) raised demands for labour cess against the petitioners in terms of Section 3 of the said Act. Petitioners have disputed such demands on the following grounds:-

- (I) The petitioners are covered under the provisions of Factories Act (63 of 1948). Since, Section 2(d) of Building and other Construction Workers (Regulation of employment and conditions of services) Act, 1996

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(for short "Construction Workers Act") exempts such building and construction work to which the provisions of Factories Act, 1948 applies, the imposition and demand of cess was untenable.

(II) The demand for cess amount prior to 04.12.2008 was illegal as the Himachal Pradesh Building and Other Construction Workers Welfare Board was constituted by the State of Himachal Pradesh on 02.03.2009 with retrospective effect from 04.12.2008.

(III) The levy of cess on the total project cost was against the provisions of Cess Act. According to petitioners, the cess was leviable only on the cost of construction component of the projects.

(iv) The provisions contained in Rule 14(b) of the Cess Rules mandating pre-deposit of entire demanded amount for maintaining the appeal was bad in law.

5. The petitioners in some of the petitions have assailed the assessment order(s) passed by the Assessing Officer under Cess Act and in some of the petitions, the respective petitioners had taken recourse to the remedy of appeal before the Appellate Authority under the Cess Act and

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having remained unsuccessful have approached this Court for assailing the orders passed by the Appellate Authority. Nonetheless, the grounds of challenge, as noticed above, remain the same.

6. The respondents have contested the claims of petitioners and have supported the orders under challenge before this Court passed either by the Assessing Officer or by the Appellate Authority.

7. I have heard learned counsel for the parties and have also gone through the record carefully.

8. At the very outset, learned counsel for the petitioners have fairly conceded that the legal position in respect of first two claims noticed hereinabove stands settled by the pronouncements made by the Hon'ble Supreme Court in **A. Prabhakara Reddy and Company vs. State of Madhya Pradesh and others, (2016)1 SCC 600** and **LANCO Anpara Power Limited vs. State of Uttar Pradesh & Ors., (2016)10 SCC 329**.

9. As regards the claim of the petitioners, as noticed at serial No.3 above, it has been submitted that the determinate factors for levy of cess under the Cess Act and

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the Rules framed thereunder, have been clarified by Hon'ble Supreme Court in ***Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another, (2021)6 SCC 15*** and the reassessment of the cess leviable on the petitioner is required to be made in light of decision in Uttar Pradesh Power Transmission Corporation Ltd. (supra).

10. The petitioners have also been in unison, with respect to their 4th Claim as noticed above, in making the submission that in case the levy of cess on petitioners is ordered to be re-assessed by Assessing Officer(s) in light of decision in Uttar Pradesh Power Transmission Corporation Ltd. (supra), they will not press the said claim for the time being reserving the liberty to seek appropriate legal remedy for such claim, if so required.

11. The legal position, as noticed above, has not been denied or disputed by the respondents.

12. In ***A. Prabhakara Reddy and Company vs. State of Madhya Pradesh and others, (2016)1 SCC 600***, the Hon'ble Supreme Court has held as under:-

"13. The fact that the task of registering the workers and providing them the benefit may take

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sometime, would not affect the liability to pay the levy as per the Cess Act. Any other interpretation would defeat the rights of the workers whose protection is the principal aim or primary concern and objective of the BOCW Act as well as the Cess Act. The Cess is a fee for service and hence, its calculation, as per settled law is not to be strictly in accordance with quid pro quo rule and does not require any mathematical exactitude. The scheme of the BOCW Act, the Cess Act and the Rules warrant that the lawfully imposable cess should be imposed, collected and put in the statutory welfare fund without delay so that the benefits may flow to the eligible workers at the earliest. The scheme of the BOCW Act or the Cess Act does not warrant that unless all the workers are already registered or the welfare fund is duly credited or the welfare measures are made available, no cess can be levied. In other words the service to the workers is not required to be a condition precedent for the levy of the cess. The rendering of welfare services can reasonably be undertaken only after the cess is levied, collected and credited to the welfare fund.

14. We also find no merit in other submission advanced on behalf of the appellants that there is legal impediment in charging levy on the cost of construction incurred by the employer from a particular period on account of constitution of Board from a particular date or for any other reason. This argument is fallacious. Such beneficial measures for the welfare of workers are applicable even to the construction activity which may have commenced before coming into force of the BOCW Act and the

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Cess Act, if they are subsequently covered by the provisions of these Acts. There can be no legal obstacle in ignoring the construction cost incurred before the cess became leviable by distinguishing it from the cost of construction incurred later, from a date when the Board is available to render service to the Building and other construction workers. Levy of cess in these facts and circumstances cannot be faulted for any reason. Demand of cess in the given facts cannot amount to retrospective application of the Cess Act. Hence the appeals must fail.”

13. In **LANCO Anpara Power Limited vs. State of Uttar Pradesh & Ors., (2016)10 SCC 329**, the legal position has been enunciated as under:-

“34. On the conjoint reading of the aforesaid provisions, it becomes clear that “factory” is that establishment where manufacturing process is carried on with or without the aid of power. Carrying on this manufacturing process or manufacturing activity is thus a prerequisite. It is equally pertinent to note that it covers only those workers who are engaged in the said manufacturing process. Insofar as these appellants are concerned, construction of building is not their business activity or manufacturing process. In fact, the building is being constructed for carrying out the particular manufacturing process, which, in most of these appeals, is generation, transmission and distribution of power. Obviously, the workers who are engaged in construction of the building also do not fall within the definition of 'worker' under the Factories Act. On these two aspects there is no cleavage and both parties are at ad idem. What follows is that these construction workers are not covered by the provisions of the Factories Act.

36. We may mention at this stage that High Court is right in observing that merely because the appellants have obtained a licence under Section 6 of the Factories Act for registration to work a factory, it

would not follow therefrom that they answer the description of the “factory” within the meaning of the Factories Act. We have reproduced the definition of 'factory' and a bare reading thereof makes it abundantly clear that before this stage, when construction of the project is completed and the manufacturing process starts, 'factory' within the meaning of Section 2(m) of the Factories Act does not come into existence so as to be covered by the said Act.

38. It is not in dispute that construction of the projects of the appellants is covered by the definition of “building or other construction work” as it satisfies first two elements of the definition pointed out above. In order to see whether exclusion clause applies, we need to interpret the words 'but does not include any building or other construction work to which the provisions of the Factories Act apply' (emphasis supplied). The question is as to whether the provisions of the Factories Act apply to the construction of building/project of the appellants. We are of the firm opinion that they do not apply. The provisions of the Factories Act would “apply” only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project. That is how the exclusion clause is to be interpreted and that would be the plain meaning of the said clause. This meaning to the exclusion clause ascribed by us is in tune with the approach adopted by this Court in *Organo Chemical Industries v. Union of India* [(1979)4 SCC 573]. Two separate, but concurring, opinions were given by Justice V.R. Krishna Iyer and Justice A.P. Sen, and we reproduce here below some excerpts from both opinions:

“Justice A.P. Sen (SCC p.586 para 23)

“23.Each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words 'devoid of concept or purpose' will reduce much of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole”. (emphasis supplied)

Justice V.R. Krishna Iyer (SCC p.592, para 241)

“41. A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages' a larger, fulfilling meaning.”

39. The aforesaid meaning attributed to the exclusion clause of the definition is also in consonance with the objective and purpose which is sought to be achieved by the enactment of BOCW Act and Welfare Cess Act. As pointed out above, if the construction of this provision as suggested by the appellants is accepted, the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the Factories Act nor of BOCW Act/Welfare Cess Act. That could not have been the intention of the Legislature. BOCW Act and Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers.

40. Purposive interpretation in a social amelioration legislation is an imperative, irrespective of anything else. This is so eloquently brought out in the following passage in the case of *Atma Ram Mittal v. Ishwar Singh Punia*[(1988) 4 SCC 284]:

“9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. See *Commentaries on the Laws of England* (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in *Poppatlal Shah v. State of Madras* [AIR 1953 SC 274 : 1953 SCR 677 : 1953 Cri LJ 1105: (1953) 4 STC 188] said that each

word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words [Ed.: Lord Reid in the *aforecited case* had observed: (All ER p. 814) "We often say that we are looking for the intention of Parliament, but this is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said."] as was said by Lord Reid in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G* [1975 AC 591, 613 : (1975) 1 All ER 810; (1975) 2 WLR 513] . We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law."

41. How labour legislations are to be interpreted has been stated and restated by this Court time and again. In *M.P. Mineral Industry Association v. Regional Labour Commr. (Central)* [AIR 1960 SC 1068], this Court while dealing with the provisions of the Minimum Wages Act, 1948, observed that this Act is intended to achieve the object of doing social justice to workmen employed the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction. In *Surendra Kumar Verma v. The Central Government Industrial Tribunal* [(1980)4 SCC 443], this Court reminded that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

42. We would also like to reproduce a passage from *Workmen of American Express v. Management of American Express* [(1985) 4 SCC 71], which provides complete answer to the argument of the appellants based on literal construction:

“4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the “colour”, the “content” and the “context” of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* [(1971) 3 All ER 237]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations.”

43. In equal measure is the message contained in *Carew and Co. Ltd. v. Union of India* [(1975)2 SCC 791]:

“21. The law is not “a brooding omnipotence in the sky” but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate...”

44. The sentiments were echoed in *Bombay Anand Bhavan Restaurant v. Deputy Director, Employees' State Insurance Corporation & Anr.* [(2009)9 SCC 61] in the following words:

“20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a

factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects."

14. Thus, the first and second claims of petitioners do not survive. The petitioners are not entitled to claim exemption under the Cess Act by taking shelter of applicability of Factories Act, 1948. Similarly, the cess has become leviable from the date of commencement of Cess Act and any construction carried thereafter will be a determinate component for the purpose of levy of cess.

15. In ***Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another, (2021)6 SCC 15***, it has been held as under:-

"22. In terms of the said Framework Agreement, the work was split, and covered by four separate contracts. The first contract was for design, engineering, manufacture, testing at works and supply of all required equipment and materials with accessories and auxiliaries,

as detailed in the said contract; the second contract covered erection, commissioning at site including unloading, handling etc.; testing and the third contract covered all civil works including materials for commissioning and handing over of the Substations and the fourth contract covered operations and maintenance for three years.

23. In sub-clause 5 of the said Frame Work Agreement, under the head "Nature of Contract", it was clearly stated that the first and second contract shall cover all works other than civil works required to be completed. The first contract covered supply and delivery of all equipment and materials as per schedule of prices as contained in the concerned contract and any other item required to complete the scope of work for completion of sub-station including their performance and guarantees; the second contract covered unloading, handling at site, erection, testing and commissioning of all the equipment and material supplied by the contractor under the first contract and any other work required to complete the scope for commissioning and handing over of the entire sub-station. The third contract would cover all civil works including required materials under its scope.

Four separate contracts were executed by and between UPPTCL and the Respondent No.1. There can be no doubt that cess under the Cess Act is payable in respect of the Third Contract, which covers all civil works. The first and second contracts, which cover all works other than civil works, and do not involve any construction, do not attract cess under the Cess Act.

53. Cess under the Cess Act read with BOCW Act is leviable in respect of building and other construction works. The condition precedent for imposition of cess

under the Cess Act is the construction, repair, demolition or maintenance of and/or in relation to a building or any other work of construction, transmission towers, in relation inter alia to generation, transmission and distribution of power, electric lines, pipelines etc. Mere installation and/or erection of pipelines, equipments for generation or transmission or distribution of power, electric wires, transmission towers etc. which do not involve construction work are not amenable to Cess under the Cess Act. Accordingly no intimation or information was given or any return filed with the Assessing Officer under the Cess Act or the Inspector under the BOCW Act in respect of the First and Second Contracts, either by UPPTCL or by the Respondent No.1.”

16. A perusal of orders passed by the Assessing Officer or Appellate Authority, as assailed in the instant petitions, reveal that such orders are not in conformity with the exposition of law made in **Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another, (2021)6 SCC 15**, and for such reason, all such orders are incapable of withstanding the scrutiny of this Court. All such orders, for above reason, are required to be set aside with directions to the Assessing Officer(s) under Cess Act to reassess the cess leviable on the petitioners strictly in light of what has been held in **Uttar Pradesh Power Transmission**

Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another, (2021)6 SCC 15.

17. In light of above discussion, the petitions are disposed of by setting aside all the orders passed by the Assessing Officer(s) or the Appellate Authority(ies) under the Cess Act against the petitioners with direction to the Assessing Officer(s) to reassess the leviable cess against the petitioners strictly in the light of judgment passed by the Hon'ble Supreme Court in ***Uttar Pradesh Power Transmission Corporation Limited and Another vs. CG Power and Industrial Solutions Limited and Another, (2021)6 SCC 15.*** The entire exercise will be done by the Assessing Officer(s) within three months from the date of passing of this order. The petitioners are directed to effectively associate themselves in the process of assessment by the Assessing Officer(s), if so required, by the said authority.

18. In view of the above order, liberty is reserved in favour of the petitioners to withdraw their claim No.4 for the time being and to seek appropriate legal remedy in respect

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thereof at appropriate stage, if so advised. All the petitions are disposed of accordingly, so also, the pending applications, if any.

(Satyen Vaidya)
Judge

5th January, 2024.
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High Court of H.P.