



UPDATE ON SUPREME COURT'S JUDGMENT ON LEVY OF LABOUR CESS ON SUPPLY CONTRACTS

The Hon'ble Supreme Court of India, on 24 August 2020, delivered a landmark judgment in ***Uttar Pradesh Power Transmission Corporation Ltd. And Anr. v. Cg Power And Industrial Solutions Limited And Anr.*** (special leave petition (C) NO. 8630 OF 2020) ("**UPPTCL case**"). The judgment of the Apex Court which has far-reaching implications, shedding light on the kind of contracts that attract the levy of labour cess under the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 and the manner in which they can and cannot be levied.

BACKGROUND

- This is an appeal against the final order passed by the Hon'ble High Court of Allahabad (Lucknow bench) dated 24/02/2020 which set aside the letters issued by the Executive Engineer of Uttar Pradesh Power Transmission Corporation Ltd. (the Appellants in the present case, hereinafter referred to as "**Appellant**") demanding the remittance of Labour Cess amounting to INR 2,60,68,814/- (Rupees Two Crore Sixty Lakh Sixty-Eight Thousand Eight Hundred and Fourteen only).

- Being aggrieved by the setting aside of the letters dated 02/09/2016 and 29/12/2018, the Respondent in the case before the Allahabad High Court appealed to the Hon'ble

Supreme Court by way of a Special Leave Petitioner under Article 136 of the Constitution of India.

- This case concerns a dispute between the Uttar Pradesh Power Transmission Corporation Ltd. and CG Power an Industrial Solutions Ltd. (hereinafter referred to as “**Respondent**”) that arose out of a Framework Agreement entered between parties for construction of electrical power substations. The Framework Agreement further consisted of four separate contracts- *first*: supply and delivery of equipment and material; *second*: handling, erection, testing and commissioning works; *third*: all civil works including materials for commissioning and handing over of the Substations; *fourth*: operations and maintenance for a period of three years.
- Pursuant to the First contract which deals with supply and delivery, the Respondent submitted two performance bank guarantees issued by Corporation Bank, Mumbai and duly discharged their duties stated in the First Contract. When there was an audit inspection conducted by the Audit Officer, the Accountant General pointed out the failure on the Appellant’s part to levy and collect labour cess from the bills raised by the Respondent with respect to the First Contract. The Accountant General observed that the Appellant was required to levy Labour Cess at the rate of not less than 1% and not exceeding 2% of the total cost of construction incurred by the Appellant which has to be deposited with the Building and Other Construction Workers Welfare Board.

LAWS INVOLVED:

- The Executive Engineer of the Appellant levied Labour Cess *vide* letters dated 02/09/2016 and 29/12/2018 relying on section 3 sub-section (1) and (2) of the Building and other Construction Workers' Welfare Cess Act, 1996 ("**Cess Act**") read with Rules 3 and 4(1)(2)(3) and (4) of the Building and other Construction Workers Welfare Cess Rules, 1998 ("**Cess Rules**") and Section 2(1)(d), (g) and (i) of the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 ("**BOCW Act**").
- The BOCW Act was enacted to regulate the employment and conditions of service of building and other construction workers in order to provide for their safety, health and welfare measures. Section 2(1)(d) of the BOCW Act defines 'construction work' to mean the construction, alteration, repairs, maintenance or demolition of or in relation to, buildings, streets, roads, etc and such other works that may be specified by the Government by way of Notifications but it does not include any building or other construction work which attract the provisions of the Factories Act, 1948 or the Mines Act, 1952.
- Section 2(g) of the BOCW Act the term 'Contractor' means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who

supplies building workers for any work of the establishment and includes a sub-contractor

SUMMARY OF THE ARGUMENTS

- Subsequent to the issuance of the letters by the Executive Engineer of the Appellant, the Respondent raised objections stating that the company was not covered under the definition of a contractor under the BOCW Act in regard to the First Contract and sought for the opinion of the Labour Commission with respect to the applicability of Labour Cess on contracts pertaining to supply of equipment and materials.
- When the Respondent contended the levy of labour cess the Appellant partly discharged the bank guarantee and refused to release the rest in order to ensure the recovery of amount towards labour cess.
- The main contention of the Respondent was that Labour Cess has to be levied in the manner as stipulated under the Cess Act, Cess Rules and the BOCW Act. The High Court of Allahabad found that in the absence of any order for levy and assessment under the Cess Act of 1996, recovery could not be made pursuant to an audit objection of CAG.
- The Respondent further contended that the Appellant cannot withhold payments or to realize the cess by revocation of bank guarantee furnished by the Respondent as it is not stipulated in any of the four contracts and the Framework Agreement.

FINDINGS OF THE HON'BLE SUPREME COURT

- The Hon'ble Supreme Court places reliance on *Dewan Chand Builders and Contractors v. Union of India* ((2012) 1 SCC 101) and *Laco Anpara Power Limited v. State of Uttar Pradesh and ors.* to come to the conclusion that the statutory scheme of the BOCW Act excludes a supply contract from within its ambit.
- The Respondent herein does not fall under the definition of a 'contractor' in respect of the first, second and the fourth contract as per Section 2(1)(g) of the BOCW Act and neither is it an 'employer' as per section 2(1)(i) of the said Act. Therefore, they are not liable to pay labour cess with respect the first, second and the fourth contracts.
- The Apex court further held that mere installation or erection of equipment for generation or transmission or distribution does not involve construction work and are not amenable to cess under the Cess Act. A contract purely for supply is statutorily exempted from levy under the BOCW Act.
- Upholding the order of the Hon'ble High Court of Allahabad dated 24/02/2020, the Hon'ble Supreme Court held that forcible extraction of labour cess solely on the basis of the CAG report when the Respondent does not fall under the ambit of the Cess Act or the Cess Rules is in excess of the power conferred to the Appellant by law including the mode and manner in which they attempted to extract the outstanding amounts.

OUR COMMENT

- The Hon'ble Supreme Court in the UPPTCL case has laid down clear grounds and a much-needed clarity on the levy of labour cess on construction contracts between the parties. The owners need to be more cautious while levying cesses and more importantly the manner in which they do so. Merely placing reliance on third party reports and levying cesses is a clear afterthought which cannot be entertained.
- This Judgment reassures the contractors of what is applicable to them and secures them from local bodies abusing the power vested in them while levying taxes, fees and other cesses on them.

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