

**Vs. Cesc Ltd. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/1059151](http://sooperkanoon.com/1059151)

**Court :** Kolkata

**Decided On :** Aug-31-2012

**Judge :** Jayanta Kumar Biswas

**Respondent :** Cesc Ltd. and ors.

**Judgement :**

ORDER

SHEET WP 113.of 2009 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE BEEKAY NIRYAT LTD.Versus CESC LTD.& ORS.Petitioner BEFORE: The Hon'ble JUSTICE JAYANTA KUMAR BISWAS

Date :

31. t August, 2012.

For Petitioner : Ms.Tapati Chatterjee, Advocate.

For Respondents : Mr.Ashok Kumar Jana, Advocate.

The Court : The petitioner in this WP under art.226 dated November 16, 2009 is questioning an order of final assessment dated September 9, 2009 ( WPp.96 ) passed by an assessing officer of CESC under s.126 of the Electricity Act, 2003.

The petitioner had a remedy of appeal under s.127 of the Act.

It could appeal within thirty days of the order of final assessment dated September 9, 2009.

It chose not to appeal, and brought this WP after expiration of the period of limitation for filing the appeal.

Having consciously waived its statutory right to appeal against the order, in my opinion, the petitioner was not entitled to question the order before the Writ Court by filing a WP under art.226 after expiration of the period of limitation for filing the appeal.

In my opinion, the WP is liable to be dismissed on this ground alone.

It is to be noted that the petitioner has not stated why it chose not to appeal.

In fact, it has not stated anything regarding the remedy of appeal.

Even otherwise, I am not minded to interfere with the order.

The order was passed after hearing the representative of the consumer that filed a written objection denying the allegation of theft of energy.

The assessing officer considered the materials placed before him and reached a conclusion that the allegation of theft was proved.

It is not for the Writ Court to reassess the materials and substitute its conclusion for that of the assessing officer.

Counsel for the petitioner submits that the petitioner has already paid a substantial part of the amount payable under the order of final assessment, and that the petitioner is engaged in a talk of settlement with CESC.

This is no ground to interfere with the order of final assessment passed by the assessing officer.

Nothing prevents the petitioner from paying and also from carrying forward the talk of settlement.

It is for CESC to examine whether the proposals are acceptable.

There is no reason for this Court to make any observation.

For these reasons, the WP is dismissed.

No costs.

Certified xerox.

( JAYANTA KUMAR BISWAS, J.) SS.

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