

GAHC010238612019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7492/2019

SWAPAN KUMAR GOGOI
S/O. LT. ANIL KR. GOGOI, R/O. HOUSE NO.43, PUBERUN PATH, HATIGAON,
P.O. AND P.S. HATIGAON, GUWAHATI, ASSAM-781038.

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. HEREIN BY THE SECY. TO THE GOVT. OF ASSAM, FISHERY DEPTT.,
DISPUR, GUWAHATI, ASSAM-781006.

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GUWAHATI
ASSAM-781006.

3:THE ADDL. CHIEF SECRETARY
TO THE GOVT. OF ASSAM
FINANCE (TAXATION) DEPTT.
JANATA BHAWAN
DISPUR
GUWAHATI
ASSAM-781006.

4:THE COMMISSIONER OF STATE TAX (GST)

ASSAM
DISPUR
GUWAHATI-781006.

5:THE DIRECTOR OF FISHERIES

THE DEPTT.
OF FISHERIES
MEEN BHAWAN
GOPINATH NAGAR
GUWAHATI
ASSAM-781016.

6:THE DY. COMMISSIONER

GOALPARA
BALADMARI
ASSAM-783121.

7:THE EXECUTIVE ENGINEER

THE DEPTT. OF FISHERIES
GOPINATH NAGAR
GUWAHATI
ASSAM-781016.

8:THE DISTRICT FISHERIES DEVELOPMENT OFFICER

GOALPARA
ASSAM-783121.

9:THE CIRCLE OFFICER CUM INSPECTING OFFICER

BALIJANA
GEETANS GAR
GOALPARA
ASSAM-783121

Advocate for the Petitioner : MR. S BORTHAKUR, MR. D GOGOI, MR. J ABBAS

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

26.09.2024

Heard Mr. J. Abbas, learned counsel for the petitioner as well as Ms. U. Das,

learned counsel for all the respondents, except the respondent Nos.3 & 4.

2. The petitioner's case is that the petitioner had participated in a tender process for construction of wholesale fish markets in the district of Dhubri, Barpeta, Hailakandi and Goalpara in the State of Assam. The petitioner had submitted his bid price of Rs.2,32,14,600/- for construction of the wholesale fish market only in respect with Goalpara district. Being the lowest bidder the petitioner's tender was accepted and he was allotted the contract work. The petitioner's grievance is that while the NIT had been issued at the time the Value Added Tax Act, 2003 (hereinafter referred to as the '2003 Act') was in force, the petitioners 2nd and 3rd running bills have been released to the petitioner after making deductions, in terms of the Assam Good and Services Tax Act, 2017 (hereinafter referred to as the 'SGST Act') and the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act').

3. The petitioner's counsel submits that as the NIT had been issued during the validity of the 2003 Act and the first running bill had been released after making deductions on the basis of the 2003 Act, there was no justification for the State respondents to have released the petitioner's 2nd and 3rd running bills after making deductions in terms of the SGST and CGST Act, even though the 2nd and 3rd running bills had been submitted subsequent to 01.07.2017, i.e., the date when the SGST and CGST Act came into force.

4. The petitioner's counsel submits that subsequent to the filing of the writ petition, a similar writ petition, i.e., WP(C) No.4201/2020 has been decided by this Court vide judgment and order dated 21.11.2023, wherein it has been held at Para 56 that in cases of work contracts which were partially executed on or

before 30.06.2017, bills/invoices which were raised before the onset of the CGST and SGST, TDS would have to be made as per the provisions of the 2003 Act. On the other hand, if bills and invoices were raised after the coming into force of the SGST and CGST, TDS would have to be made as per the provision of the new Act. Further, for works which were partially executed on or after 01.07.2017 and invoices were raised during the GST regime, wherein payments are received during GST regime, TDS would be made as per the provisions of the GST Act, since the transaction was not accounted for under the 2003 Act. This Court in WP(C) 4201/2020 thus held that the above clarification made in terms of the Circular No.3/2017-GST dated 24.08.2017 was in accordance with the provision of Sections 12 and 13 read with Clause 6(a) of Schedule-II of the SGST and CGST Act.

5. The petitioner's counsel submits that in view of the above decision of this Court in WP(C) No.4201/2020, the petitioner's case has become infructuous. However, he prays that the petitioner may be allowed to submit a representation to the authorities for taking the benefit of Section 64A of the Sales of Goods Act, 1930.

6. Ms. U. Das, learned counsel appearing for all the respondents, except respondent Nos. 3 & 4, submits that in view of the validity of Circular No.3/2017-GST (Memo No. CT/GST-10/2017/194-A), issued by the Commissioner of Taxes, Assam having been upheld by this Court in WP(C) No.4201/2020, the petitioner's case has become infructuous, as there was no infirmity in the TDS being made in terms of the SGST and CGST Act. She however submits that though the petitioner had made a claim that 12% CGST and SGST had been deducted from the 2nd and 3rd running bills of the

petitioner, the State had deducted only 1% CGST and 1% SGST from the 2nd and 3rd running bills of the petitioner.

7. On hearing the counsels for the parties and keeping in view the judgment passed by this Court in WP(C) No.4201/2020, this Court finds that the present writ petition has become infructuous, inasmuch as, there was no infirmity with the application of the CGST and SGST by the State respondents, while making deductions against the 2nd and 3rd running bills of the petitioner. It is needless to add that if the petitioner is of the view that he is entitled to some concession as per law, there is no bar for the petitioner to submit a representation to that effect.

8. The writ petition is accordingly dismissed as infructuous.

JUDGE

Comparing Assistant