<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>
<u>BENCH AT AURANGABAD</u>

<u>WRIT PETITION NO. 1140 OF 2015</u>

Manisha Infrastructure Pvt. Ltd.
Company registered under
Companies Act, 1956, Through,
Managing Director,
Pradeep S/o Bhanudasrao Chavan,
R/o. : Saraswati Bhuwan Colony,
Aurangabad (Maharashtra) .. <u>Petitioner</u>

<u>Versus</u>

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Chief Engineer and Chief Adminitrator,
Command Area Development Water
Resources, Aurangabad, Dist. : Aurangabad

3. Superintending Engineer,
Jayakwadi Project Circle,
Aurangabad, Dist. : Aurangabad

4. Executive Engineer,
Nandur Madhmeshwar Kalva Division No. 2,
Vaijapur, Headquarter Wadigodri,
Tq. : Ambad, Dist. : Jalna

5. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

6. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. <u>Respondents</u>

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Shyam C. Arora, Advocate for Respondent Nos. 1 , 3 and 4.
Shri Alok Sharma, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 5.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 6.

WITH

WRIT PETITION NO. 2959 OF 2015

M/s. Gagan Construction Co. and
M/s. Garje Steel Industries Latur (Joint Venture)
Through CEO & Authorized Signatory,
Ritesh S/o Ratanlal Mahindrakar,
Plot No. B-30, M. I. D. C. Area, Latur,
Dist. : Latur .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Lower Terna Canal Division No. 2,
Latur, Dist. : Latur

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Ruturaj C. Patil, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.

Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 2960 OF 2015

M/s. Garje Steel Industries Latur,
Through CEO & Authorized Signatory,
Ritesh S/o Ratanlal Mahindrakar,
Plot No. B-30, M. I. D. C. Area, Latur,
Dist. : Latur .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Minor Irrigation Division,
Parbhani

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Shyam C. Arora, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 591 OF 2015

Manisha Infrastructure Pvt. Ltd.,
Company registered under Companies Act,
1956 through, Managing Director,
Pradeep S/o Bhanudasrao Chavan,
R/o. : Saraswati Bhuwan Colony,
Aurangabad (Maharashtra) .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Chief Engineer and Chief Administrator,
Command Area Development Water
Resources, Aurangabad, Dist. : Aurangabad

3. Superintending Engineer,
Jayakwadi Project Circle,
Aurangabad, Dist. : Aurangabad

4. The Executive Engineer,
Majalgaon Project Division,
Kesapuri Camp, Majalgaon, Dist. : Beed

5. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

6. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Shyam C. Arora, Advocate for Respondent Nos. 1 to 4.

Shri Alok M. Sharma, Advocate for Respondent Nos. 1 to 3.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 5.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 6.

WITH

WRIT PETITION NO. 603 OF 2015

Precision Infratech Ltd.,
Company registered under
Companies Act, 1956 through,
Managing Director,
Bhaskar S/o. Pranlal K. Vibhakar,
R/o. : 7/C-D, Suryarath, Panchawati,
Ellishbridge, Ahmedabad (Gujrath) .. Petitioner

Versus

1. The Executive Director,
Tapi Irrigation Development
Corporation, Jalgaon, Dist. : Jalgaon

2. Chief Engineer,
Tapi Irrigation Development Corporation,
Jalgaon, Dist. : Jalgaon

3. Superintending Engineer,
Nashik Irrigation Project Circle,
Dhule, Dist. : Dhule

4. Executive Engineer,
Dhule Medium Project Division No. 1,
Dhule, Dist. : Dhule

5. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai

6. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,

Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri S. G. Karlekar, A. G. P. for Respondent Nos. 1 to 5.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 6.

WITH

WRIT PETITION NO. 2961 OF 2015

M/s. Garje Steel Industries Latur,
Through CEO & Authorized Signatory,
Ritesh S/o Ratanlal Mahindrakar,
Plot No. B-30, M. I. D. C. Area, Latur,
Dist. : Latur .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Minor Irrigation Division,,
Latur, Dist. : Latur

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Ruturaj C. Patil, Advocate for Respondent Nos. 1 and 2.
Shri Alok M. Sharma, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 2983 OF 2015

M/s. Prem Sai Constructions &
M/s. Garje Steel Industries Ltd. Latur (Joint Venture),
Through CEO & Authorized Signatory,
Ritesh S/o. Ratanlal Mahindrakar,
Plot No. B-30, M. I. D. C. Area, Latur,
Dist. : Latur .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Minor Irrigation Division,
Parbhani, Dist. : Parbhani

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Shyam C. Arora and Alok M. Sharma, Advocate for Respondent Nos. 1 and 2.

Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 2984 OF 2015

M/s. Sharda Constructions, Nanded &
Garje Steel Industries Ltd. Latur (Joint Venture),
Through CEO & Authorized Signatory,
Ritesh S/o. Ratanlal Mahindrakar,
Plot No. B-30, M. I. D. C. Area, Latur,
Dist. : Latur .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Nanded Minor Irrigation Division,
Nanded, Dist. : Nanded

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Alok M. Sharma, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 3011 OF 2015

M/s. Shri Satya Saibaba Constructions,
Latur, a partnership firm, Mane Chambers,
Opp. S. T. Depot., Ausa Road,
Shivaji Chowk Latur, Through authorized
Signatory,
Ritesh S/o. Ratanlal Mahindrakar .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Lower Terna Canal Division No. 2,
Latur, Dist. : Latur

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Ruturaj C. Patil, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4318 OF 2015

M/s. Pooja Construction, Nanded,
C/o. Shivalaya Ambekar Nagar,
Nanded, Dist. : Nanded,
Through authorized signatory,
Ganpati S/o. Baliram Morge
(Managing Director) .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Lower Terna Cannel Division No. 2,
Latur, Dist. : Latur

3. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Shyam C. Arora, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4319 OF 2015

M/s. Premsai Construction Company,
22, “Kanchanjugh” Appartment, Aundh,
Pune, Dist. : Pune,
Through, Partner and authorized signatory,

Rajendra S/o. Rangnath Patil .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Lower Terna Cannel Division No. 2,
Latur, Dist. : Latur

3. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Ruturaj C. Patil, Advocate for the Respondent No. 1.
Shri Alok M. Sharma, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4320 OF 2015

M/s. Sharda Constructions and
Precision Technofab Engineering Ltd.,
(Joint Venture), Plot No. 80, Rudraksha
Building, Bhagyanagar, Nanded,
Dist. : Nanded, Through authorized signatory,
Shivshankar S/o. Baliram Chakurkar .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Vishnupuri Project Division No. 1,
Lendi Project Division,
Nanded, Dist. : Nanded

3. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Sudhir G. Bhalerao, Advocate for Respondent Nos. 1 and 2.
Shri Alok M. Sharma, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4402 OF 2015

M/s. Piyush Enterprises,
81, Jaivishwabharti Colony, Garkheda Road,
Auranbad, Through authorized signatory,
Gajendra S/o. Krushnarao Chaudhari (Manager)
.. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development

Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Minor Irrigation Division No. 1,
Aurangabad, Dist. : Aurangabad

3. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Respondent No. 1 served.
Shri Sudhir G. Bhalerao, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4435 OF 2015

M/s. Piyush Enterprises,
81, Jaivishwabharti Colony, Garkheda Road,
Auranbad, Through authorized signatory,
Gajendra S/o. Krushnarao Chaudhari (Manager)
.. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,

Minor Irrigation Division No. 1,
Aurangabad, Dist. : Aurangabad

3. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Sudhir G. Bhalerao, Advocate for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4436 OF 2015

Soma Enterprise Ltd.,
Through General Manger and authorized signatory,
Vishwambar Dayal Sharma,
“Soma Hights”, 3, Siddhivinayak Society,
Karve Road, Pune-36 .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development Corporation, Aurangabad, Dist. : Aurangabad

2. The Suprintending Engineer,
Nanded Irrigation Circle, Sinchan Bhavan,
Nanded

3. Executive Engineer,
Vishnupury Project Division No. 2,
Nanded

4. State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

5. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Respondent Nos. 1 and 2 served.
Shri Ruturaj C. Patil and Alok Sharma, Advocate for the Respondent No. 3.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 4.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 5.

WITH

WRIT PETITION NO. 4439 OF 2015

M/s. Sharda Constructions and
Corporation Pvt. Ltd., Nanded,
Plot No. 80, Rudraksha Building,
Bhagyanagar,
Nanded, Dist. : Nanded,
Through authorized signatory,
Ganpati S/o. Baliram Morge
(Managing Director) .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Upper Painganga Project Division No. 4,
Akhada Balapur, Tq. : Kalamnuri,
Dist. : Hingoli

3. The State of Maharashtra,
Through Department of Water Resources,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Respondent No. 1 served.
Shri Ruturaj C. Patil, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4440 OF 2015

M/s. Mule Brothers Ltd. and
Shreehari Associates Pvt. Ltd. (Joint Venture),
Through Authorized Signatory,
Satish S/o. Madhukar Dalal,
General Manager (Technical),
Tapadiya Terraces, Adalat Road,
Aurangabad, Dist. : Aurangabad .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. Executive Engineer,
Nandur Madhmeshwar Canal Division No. 2,
Vaijapur Head Office, Wadigordi,
Tq. : Ambad, Dist. : Jalna

3. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Respondent No. 1 served.
Shri Sudhir G. Bhalerao, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 4441 OF 2015

Soma Enterprise Ltd.,
Through General Manager and authorized signatory, Vishwambar Dayal Sharma,
“Soma Hights”, 3, Siddhivinayak Society,
Karve Road, Pune - 36 .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development Corporation, Aurangabad, Dist. : Aurangabad

2. The Suprintending Engineer,
Nanded Irrigation Circle, Sinchan Bhavan,

Nanded

3. Executive Engineer,
Vishnupury Project Division No. 2,
Nanded

4. The State of Maharashtra,
Through Department of Water Recourses,
Mantralaya, Mumbai-32

5. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Shri Shyam C. Arora, Advocate for Respondent Nos. 1 to 3.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 4.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 5.

WITH

WRIT PETITION NO. 4552 OF 2015

M/s. Sharda Constructions and
Corporation Pvt. Ltd., Nanded,
Plot No. 80, Rudraksha Building,
Bhagyanagar,
Nanded, Dist. : Nanded,
Through authorized signatory,
Ganpati S/o. Baliram Morge
(Managing Director) .. Petitioner

Versus

1. The Executive Director,
Godavari Marathwada Irrigation Development
Corporation, Aurangabad, Dist. : Aurangabad

2. The Executive Engineer,
Vishnupury Project Division No. 2,
Nanded, Dist. : Nanded

3. The State of Maharashtra,
Through Department of Water Resourses,
Mantralaya, Mumbai-32

4. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Respondent No. 1 served.
Shri Shyam C. Arora, Advocate for the Respondent No. 2.
Shri S. G. Karlekar, A. G. P. for the Respondent No. 3.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 4.

WITH

WRIT PETITION NO. 11632 OF 2014

Manisha Precision (J.V.)
Company regisered under Companies Act,
1956 through,
Managing Director,
Bhaskar S/o. Pranlal K. Vibhakar,
R/o. : 7/C-D, Suryarath, Panchawati,
Ellishbridge, Ahmedabad (Gujrath) .. Petitioner

Versus

1. The Executive Director,
Tapi Irrigation Development
Corporation, Jalgaon, Dist. : Jalgaon

2. Chief Engineer,
Tapi Irrigation Development Corporation,

Jalgaon, Dist. : Jalgaon

3. Superintending Engineer,
Nashik Irrigation Project Circle,
Dhule, Dist. : Dhule

4. Executive Engineer,
Dhule Medium Project Division No. 1,
Dhule, Dist. : Dhule

5. Senior Intelligence Officer,
DGCEI – Regional Unit Pune,
Department of Revenue,
Central Board of Excise and customs,
Directorate General of Central Excise Intelligence,
Regional Unit, VI th Floor, Vohra Kothari Building,
1025, Sadashiv Peth, Pune - 411030 .. Respondents

Shri N. B. Khandare, Advocate for the Petitioner.
Respondent Nos. 1 and 2 served.
Smt. Kalpalata B. Bharaswadkar, Advocate for the Respondent No. 5.

CORAM : S. V. GANGAPURWALA AND A. M. BADAR, JJ.

CLOSED FOR JUDGMENT ON : 26.02.2016
JUDGMENT PRONOUNCED ON : 06.05.2016

JUDGMENT *(Per S. V. Gangapurwala, J.)* :-

1. The petitioners in all these writ petitions are contractors. The respondent invited sealed tenders in B-1 (percentage rate) format for the construction work as detailed in the said tender such as fabrication of gates etc. These petitioners had filled in the tenders pursuant to the tender notice issued by the Respondent / Godavari Marathwada Irrigation Development

Corporation (hereinafter referred to as G. M. I. D. C.). All these petitioners were successful bidders and were issued work orders pursuant to the said tender.

2. The grievance of the petitioners is that, the Respondent / Corporation is deducting the amounts towards excise duty from the running bills. The petitioners have sought declaration that the deduction of the amounts towards the excise duty is illegal. The respondent be directed to refund the amounts collected pursuant thereto by the Respondent / Corporation.

3. Mr. Khandare, the learned counsel for the petitioners strenuously contends that, the tenders were invited in B-1 (percentage rate) format. The petitioners were required to quote their rates above or below the estimated cost for the project. According to the learned counsel, Schedule – B to the tender document enumerated in detail the description of individual items of work and corresponding estimated rates for the said items worked out by the department. The final estimated project cost was put to the tender. The petitioners have only to submit unconditional tender without any condition of deviation.

4. The learned counsel submits that, excise duty is not leviable on the work done by the petitioners. The Respondent / Corporation did not have any authority to retain the amount on the count that excise duty is payable. The learned counsel submits that, the work of fabrication has been done on the site. Because of the size of the said work it is not possible to transport the said gates and other items. The work of the same

was done on the site itself. The learned counsel submits that, even as per Notification No. 3 of 2005 issued under Central Excise Tariff Act, 1985 the goods fabricated on site of work used in construction at such site Tariff Item No. 7308 excise duty payable is nil. So also, the service tax is not payable on works contracts in respect of Dams which are specifically excluded under Section 65 (25) (B) of Central Excise Act. The learned counsel further submits that, while submitting the bids all inputs have been considered including Nil rate of excise duty. The learned counsel submits that, under the contract all Taxes, Duties, Cess etc. and payment thereof is the duty of the contractor and the petitioners have cleared their liability. The learned counsel submits that, while deducting the amounts no notices were issued to the petitioners and upon enquiry the petitioners were told that the Auditor has raised an objection that while preparing estimated cost excise duty was considered and therefore the contractors i.e. the petitioners have got undue benefit, as such, the amounts are deducted. According to the learned counsel, the deductions are unauthorized. The contractors do not have any access to the costing done by the Respondent / Corporation at the time of arriving at an estimated cost while issuing tender. **Annexure - A** of the tender lays down the description of the project, the details of the work and estimated cost. The estimated cost is stated in lumpsum. It does not specify calculation of excise duty separately.

5. Mr. Alok Sharma, Mr. S. G. Bhalerao, Mr. R. C. Patil, Mr. S. C. Arora, the learned counsels appearing for the G. M. I. D. C. in all these petitions submit that, in the terms and conditions of

the contract entered between the petitioners and respondents at the time of issuance of work orders there is a provision that all taxes including excise duty and service tax shall be paid by the contractor and on submission of receipts of payments against taxes paid to the Government by contractor said amount would be payable to the contractor. According to the learned counsels, Clause No. 55 of the tender clause specifically quotes that the tender rates are inclusive of all Taxes, Rates, Cess. In Clause 24 of special condition of contract it is clearly mentioned that all local laws in force at the time of entering into contract and those enacted thereafter shall be binding on the contractor and he shall abide by the same. The petitioners are aware of inclusion of excise duty and service tax in the rate analysis of the items under extra item rate list wherein rates are mutually agreed. The learned counsels further submits that, the petitioners have fabricated the item near the barrage site and not on the site. The contractors are liable to pay excise duty.

6. The learned counsels further submits that, Pre – Tender meeting has been conducted, queries are put by the contractors and details are given to them. At that time also the estimated cost and its details are provided and rate of excise duty and service tax are specifically included under separate heads which forms part of the estimated cost. According to the learned counsels, the amounts have been rightly deducted and the Auditor has rightly raised an objection.

7. The learned counsels further submits that, it is not that work is as a turn key project or a lumpsum contract but work is

allotted pursuant to B - 1 tender, upon a percentage above or below the estimated cost and estimated cost includes excise duty.

8. Mrs. Bharaswadkar, the learned counsel appearing for the Excise Department strenuously contends that the items are chargeable to excise duty. The proceedings are in progress and the decision would be taken by the department about the excisability of the items i.e. whether the said items are excisable goods. The learned counsel submits that, even otherwise as the amounts have been collected as part of excise duty as per Section 11 (D) of the Central Excise Act more particularly Sub-Section 1 (A) even if the goods are held to be not excisable but a person collects the amount as representing duty of excise on any goods such a person is liable to pay the amount so collected to the credit of the Central Government forthwith. The learned counsel on instructions submits that, within six months the enquiry / proceedings would be completed by the department and a finding would be given as to whether the goods are excisable or not.

9. We have considered the submissions canvassed by the learned counsels for the respective parties.

10. As far as the question whether the items are excisable goods or not would be determined by the department where the proceedings are pending. It would not be within the ambit and purview of this Court to give dictum upon the same.

11. If, the department comes to the conclusion about the goods being excisable, it would be for the petitioners / contractors to pay the said amounts. We would restrict ourselves to the question as to whether the respondents would be entitled to deduct the amount towards the excise duty and retain it with themselves from the running bills.

12. It is a matter of record that pursuant to the tender notice issued by the Respondent / G. M. I. D. C. tenders in B-1 (percentage rate) format were tendered. The same was tendered at particular percentage above the estimated cost. There is no doubt that Pre - Tender conference is normally held for works costing above Rs. 50,00,000/-. All the works involved herein are above Rs. 50,00,000/-. In the said Pre - Tender conference the prospective tenderers have liberty to obtain clarification regarding the work and tender conditions and can also have an additional clarification. The petitioners have to quote their offers in Envelop No. 2 of the tender in the format of percentage below or above the estimated cost given in Schedule - B, Part - I at appropriate place in B-1 format. The amount of all items of Part I of Schedule - B with percentage (+ or -) and the amount of Part II of Schedule - B will be totaled and the same is considered as an offer of the tenderer. The **Annexure - 1** contains the estimated cost. In fact, the tender quotes the particular percentage above or below the estimated cost. Clause 24 lays down that, all import and excise duties, sales tax, local panchayat tax and other taxes shall be borne by the contractor and that shall be deemed to have been covered by its quoted tender rates.

13. As stated above, if, the Excise Department comes to the conclusion that the items fall within the category of excise goods subject to appeal or otherwise petitioners / contractors would be liable to pay the same. Sub-Section 1(A) of Section 11(D) would apply only if a person has collected any amount representing as a duty of excise on any goods which are wholly exempted or chargeable to nil rate of duty then in that case he is liable to pay forthwith the amount so collected to the credit of the Central Government. In the present case, the petitioners / Contractors have no where represented at the time of quoting the tender rates i.e. percentage above the estimated cost that they would be charging any particular amount towards the excise duty. The tenders were submitted with the total estimated cost. The petitioners have quoted their offers as a specific percentage above the estimated cost. The petitioners have agreed to pay excise duty as well as tax and all other taxes as would be applicable. However, it cannot be said that the petitioners have collected or represented any amount towards the payment of excise duty so as to attract Section 11-D, 1 (A) of the Central Excise Act nor that would give right to the G. M. I. D. C. to retain the said amounts. In any case the G. M. I. D. C. is not entitled to retain the said amounts. If, the Excise Department holds that the items are excisable goods the petitioners will be liable to pay the excise duty to the Excise Department. The petitioners have only submitted their offers in the shape of percentage above estimated cost. It cannot be said that they have collected the amounts representing the Respondent / G. M. I. D. C. that the said amounts are to be paid as the excise duty.

14. In light of the above, it would be inappropriate for the Respondent / G. M. I. D. C. to withhold the amounts on the ground that a particular amounts are being paid towards the excise duty separately.

15. The entire tender document does not even remotely suggest that the petitioners have represented that the said items are excisable and have quoted specific amount as a excise duty over the said items. In light of the above, the action of the G. M. I. D. C. in withholding and deducting amounts from the running bills towards excise duty is erroneous.

16. This Court had already restrained the Respondent / G. M. I. D. C. from deducting the amounts towards excise duty by way of interim order.

17. Considering the fact that the learned counsel for the Excise Department has made a statement on instructions that the department would complete its proceedings i.e. about determining whether the items of the tender works were excisable goods within six months, we pass the following order-

A] The Excise Department shall conclude their proceedings within six (6) months as undertaken by it.

B] The Respondent G. M. I. D. C. shall not retain the amounts already deducted on the ground of excise duty. They shall also not further deduct the amounts from the running bills.

C] In case Excise Department comes to the conclusion that the items of the tender work are excisable then subject to appeal or otherwise the petitioners would be liable to pay the said amount to the Excise Department.

18. The writ petitions are partly allowed, however, with no orders as to costs.

[A. M. BADAR, J.] **[S. V. GANGAPURWALA, J.]**

sam/Mar.16