

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P No.24851 o f 2017

Coimbatore Corporation Contractors

Welfare Association

Registration No.81/2012

A7-Sundaresa Iyer Layout

Trichy Road, Coimbatore - 18

Rep by its Treasurer A.Ammasaiappan

.... Petitioner

Vs.

1.State of Tamil Nadu

Rep. by its Secretary to Govt.

Municipal Administration and Water Supply Department

Secretariat, Chennai 600 009

2.The Managing Director

Tamil Nadu Water Supply & Drainage Board

No.31, Kamaraj Road

Chepauk, Chennai - 600 005.

3.The Executive Director

Tamil Nadu Water Supply & Drainage Board

No.31, Kamaraj Road

Chepauk, Chennai - 600 005.

4.The Chief Engineer

Tamil Nadu Water Supply & Drainage Board

Vachipillaiyar Street,

Vellore-06

5.State of Tamil Nadu

Rep.by its Secretary to Government

Commercial Taxes Department

Fort St.George, Chennai-9.

6.The Commissioner of Commercial Taxes

Commercial Taxes department

Ezhilagam, Chepauk, Chennai-5.

[R5&R6 impleaded as per order

dated 20.09.2017 in

WMP.Nos.26626 to 266299/2017

in WP.Nos.24851 to 24854/2017.]

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of Mandamus, directing the 1st respondent to consider and pass orders on the representation of the petitioner dated 05.07.2017, 10.07.2017, 11.07.2017 and 11.09.2017 by paying the payment of 12% GST in addition to the value of work done for all works contracts Viz.,

(i) for the contract work for which agreements were executed prior to 01.07.2017 and the work is in under progress;

(ii) for the tenders called and agreements executed after 01.07.2017 without any GST provisions in the estimate and Tender;

(iii) the levy of 12% GST provisions has to be included in the estimates itself for future tenders and has to be paid in addition to the value of work done for all works contracts as in the case of Southern Railways.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.A.Sri Jayanthi [For R1 to R4]

Special Government Pleader

Mr.K.Venkatesh [For R5&R6]

Government Advocate [Taxes]

O R D E R

The petitioner is an association registered under the provisions of the Tamil Nadu Societies Act bearing Registration No.81/2012. The Association was formed for the Welfare of the members of the Road Contractors, who have been carrying on works for the National Highways and Highways department and other Governmental organisation.

2.The contractors used to remit 2% tax on value for the works executed by them towards the Works Contract Tax under the Tamil Nadu Value Added Tax, 2006 [hereinafter called as "the TNVAT"] in terms of Section 6 of the TNVAT Act.

3.After the enactment of the Central Goods and Services Tax Act, 2017 with effect from 01.07.2017, certain problems have arisen, which has compelled the petitioner to submit representations to the respondent.

4.The petitioner would state that on 22.08.2017, the Central Government issued notification notifying that 6% of the tax is leviable by the Central Government towards Works Contract.

5.The State Government is empowered to levy towards works contract tax in addition to the works contract tax imposed by the Central Government. Therefore, the contractor would be liable to pay 12% of tax towards works contract.

6.Therefore, the petitioner/association made representations on 05.07.2017, 10.07.2017, 11.07.2017 and 11.09.2017 to the respondents stating that the contract works for which the agreements were executed prior to 01.07.2017 GST cannot be imposed and 2% VAT alone is applicable.

7.Alternatively the association stated that if the petitioners are compelled to pay anything over and above 2%, the respondent in addition to the value of the work done, has to remit the GST as per the notification, since the representations submitted by the petitioner/ association have not been considered and no orders were passed.

8.When the case came up for hearing on 18.09.2017, the petitioner was directed to implead the Secretary to Government, Commercial Taxes Department and the Commissioner of Commercial Taxes. Accordingly, an application was filed to implead and the same was ordered by order dated 20.09.2017.

9.Mr.K.Venkatesh, learned Government Advocate [Taxes] accepted notices for the newly impleaded respondents and it appears that he had personally spoken to the Commissioner of Commercial Taxes, from which, it is seen that the Government also is in the process of discussing as to how the modality has to be worked out and what is the relief petitioner/ association entitled to.

10.In any event, since the petitioner's representations are pending, it is appropriate for the respondent to respond to the same by giving them a reply. The appropriate person who would be in a position to give reply is that the Commissioner of Commercial Taxes shall give a reply. Because all other authorities are the department of Highways and National Highways etc., who would not be in a position to specifically address the issue pointed out by the petitioner.

11.The learned Government Advocate has drawn the attention of this Court to G.O. Ms.No.264, Finance [Salaries] Department, dated 15.09.2017. The operative portion of the Government Order reads as follows :-

" 5.Under the new tax regime, GST (comprising CGST, SGST and IGST) on works contracts for Government work was initially notified at 18 percent. This had resulted in representations from contractors of

ongoing works for compensation by procuring entity for increased tax liability over and above the contracted value of work. The difficulties arising out of increased GST on works contracts for Government work was deliberated in the GST Council Meetings held on 20th August 2017 and 9th September 2017. Consequently, the GST on works contracts for Government work is being reduced to 12 percent. This move more or less balances the taxes on works contracts in the pre GST and post GST regime.

6. Pending notification of guidelines in the matter, the Government now direct that all departments and procuring entities shall make 'on account' payment of bills presented by contractors, restricting the payments to the value due as per existing contract agreements. Any difference on account of final payment due based on the guidelines to be issued and the 'on account' payment made as above may be adjusted from out of the 5 percent amount retained with procuring entity. The payment of final bill in cases where on account payments have been made shall be made only after the notification of the guidelines."

12. In the light of the stand taken by the respective parties there will be a direction to the Commissioner of Commercial Taxes to consider the representation given by the petitioner/ association and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

13. The authorised representative of the petitioner/ association may be afforded an opportunity of personal hearing by the Commissioner. The petitioner/ association is directed to communicate the copies of the representation along with a copy of this order to the Commissioner of Commercial Taxes for due and effective compliance of the above directions.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
State of Tamil Nadu
Municipal Administration and Water Supply Department
Secretariat, Chennai 600 009
 - 2.The Managing Director
Tamil Nadu Water Supply & Drainage Board
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Fort St.George, Chennai-9.
 - 6.The Commissioner of Commercial Taxes
Commercial Taxes department
Ezhilagam, Chepauk, Chennai-5.
- +1cc to Mr.S.Doraisamy, Advocate, S.R.No.71631

GP(CO)
GN(13/10/2017)

W.P No.24851 of 2017

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