IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.5696 of 2020

BNR Infrastructure Projects (P) Ltd.,
Represented by its Director,
Charan Prasad. B
No.923, 17th Main Road, Anna Nagar West,
Chennai-600 040. ….Petitioner

Vs

1.State of Tamil Nadu
Represented by its Secretary,
Secretariat, Fort St. George,
Chennai-600 009.
(R1 - Given up vide order dated 13.8.2020
Made in WP.5696 of 2020 by this Court)

2.Chennai Metropolitan Development Authority,
Represented by Member Secretary,
No.1, Gandhi Irwin Road,
Tower-1, Thalamuthu Natarajan Maligai,
CMDA, Egmore, Chennai-600 008.

3.Chennai Metropolitan Development Authority,
Represented by Superintending Engineer,
Circle II, Construction Wing,
No.1, Gandhi Irwin Road,
Tower-1, Thalamuthu Natarajan Maligai,
CMDA, Egmore, Chennai-600 008.

4.Chennai Metropolitan Development Authority,
Represented by Executive Engineer,
Circle II, Construction Wing,
No.1, Gandhi Irwin Road,
Tower-1, Thalamuthu Natarajan Maligai,
CMDA, Egmore, Chennai-600 008. …Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in Letter No.SE-II/CW/DB/F257/2011 dated 20.12.2019 issued by the 2nd Respondent and to quash the same and direct the 4th Respondent to release Rs.2,83,43,504/- (Rupees Two Crores Eight Three Lakhs Forty Three Thousand Five Hundred and Four Only) which was arbitrarily deducted by the 2nd Respondent while releasing payments to the Petitioner towards price escalation charges for the works carried out by the Petitioner under Work Order vide Letter No.SE-II/CW/DB/F257/2011 dated 25.02.2016.

For Petitioner : Mr.Anirudh KrishnanFor

Respondents : Ms.P.Veena Suresh (for R2 to R4)
Standing Counsel
R1 - Given up

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O R D E R

The petitioner has filed this writ petition seeking a writ of certiorarified mandamus quashing order of the 2nd respondent i.e. Chennai Metropolitan Development Authority (CMDA) dated 20.12.2019 and a direction to the 4th respondent i.e. the Executive Engineer, CMDA to release a sum of Rs.2,83,43,504/- deducted by R2 while settling the payment due to the petitioner towards escalation charges for the works carried out under work order dated 25.01.2016.

2. My attention is drawn to the terms of contract inter se the petitioner and the CMDA in the work order which reads as follows:

> Whereas the Contractor has agreed to executive the work of "Proposed Construction of Inter-city Bus Terminus including Civil, Water Supply & Sewerage, Electrical and Fire Fighting System at Madhavaram, Chennai 600 110" and after approved by Authority in AR.No.39/2016 dt:23.02.2016, work order was issued vide letter No.SE-II/CW/DB/F257/2011 Dt: 25.02.2016 for a sum of Rs.94,16,15,562/- (Rupees Ninety four Crores Sixteen Lakhs Fifteen thousand Five Hundred and Sixty two only) inclusive of Service Tax and whereas the contractor have further agreed to abide by the terms and conditions set forth in the Agreement, schedules attached herewith.

3. In my view, reference to service tax in the aforesaid clause only fastens liability to service tax, if any, upon the petitioner and there is no liability that enures to the respondents in this regard.

4. Learned counsel for the petitioner would seek to impress upon the Court that the transaction is exempt from the payment of tax. But I do not propose to delve into this arena for two reasons.

Firstly, the Service Tax Department is not a party to this writ petition and secondly, assessment to service tax is a matter qua the Service Tax Department and the petitioner based on the terms of the contract and applicable law and we are not concerned with the same in this writ petition.

5. The impugned order dated 20.12.2019 rejects the petitioner's request for service tax deducted from his bills citing the special conditions of contract wherein the rates quoted include service tax and other taxes. The interpretation of the same is that the rates offered are deemed to include the component of service tax which the petitioner is expected to pay to the concerned department and even if such amount were not paid by reason of an exemption or otherwise such amount belongs to the CMDA and cannot be refunded to the petitioner. This interpretation is misconceived and the respondents cannot seek to enrich themselves. At the expense of the petitioner, the proper interpretation would effect that liability to service tax if any would only enure to the contractee (the petitioner). The impugned order is thus quashed.

6. Be that as it may, by way of abundant caution, the petitioner was directed to file a memo of indemnity indemnifying the respondents in the event of any liability to service tax being raised in the future.

7. The memo dated 14.12.2020 reads as follows:

Memo filed by the Petitioner

1. I, Charan Prasad .B s/o B.Venu Gopala Reddy aged about 35 years having office at 1018, TVS Colony, 42nd Street, Anna Nagar Chennai 600 101, am the director of the Petitioner herein. I am well acquainted with the facts and circumstances of the case.

1. I am filing the present undertaking affidavit specifically in relation to the release of Rs.2,83,43,504/- (Rupees Two Crores Eight Three Lakhs Forty Three Thousand Five hundred and four Only) which was arbitrarily deducted by the 4th Respondent vide Letter No.SE-II/CW/DB/F257/2011 dated 20.12.2019.

2. I state that in the event there is any demand for payment of service tax under the Work Order dated 25.02.2016 to the tune of Rs.2,83,43,504/-, made by the Department of Central Board of Indirect Taxes and Customs to the 2nd to 4th Respondent herein, the Petitioner undertakes to indemnify the said Respondents to the extent of such demand for service tax payable under the Work Order.

3. I state that the above undertaking is without prejudice to the stand taken by the Petitioner in the

Writ Petition that the Work Order is exempt payment of service tax vide Entry No.13(a) of Notification No.25/2012-ST dated 20.06.2012. The aforesaid undertaking is also without prejudice to other disputes between the Petitioner and the 2nd to 4th Respondents herein.

It is therefore prayed that this Hon'ble Court may be pleased to take the present memo on record and pass appropriate orders.

8. The respondents were also directed to confirm the time frame within which the amount in question would be paid over to the petitioner and vide memo undated filed on 18.12.2020 has confirmed that a period of eight weeks from date of submission of indemnity bond by the petitioner.

9. In the light of the indemnity extended by the petitioner in its memo dated 14.12.2020 no further bond is called for as sufficient indemnity has been extended in this regard. The respondent will, in the light of their memo dated 14.12.2020, pay over the amount deducted/recovered from the payments extended to the petitioner within a period of eight weeks from date of uploading of this order. I may also mention that in similar/identical matters that may arise, the CMDA will consider paying over of the amounts deducted upon furnishing of suitable indemnity by the contractors in the respective cases.

10. This writ petition stands disposed in the above terms. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ska/sl

To

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Tower-1, Thalamuthu Natarajan Maligai,
CMDA, Egmore, Chennai-600 008.

2. The uperintending Engineer,
Chennai Metropolitan Development Authority,
Circle II, Construction Wing,
No.1, Gandhi Irwin Road,
Tower-1, Thalamuthu Natarajan Maligai,
CMDA, Egmore, Chennai-600 008.

3.The Executive Engineer,
Chennai Metropolitan Development Authority,
Circle II, Construction Wing,
No.1, Gandhi Irwin Road,
Tower-1, Thalamuthu Natarajan Maligai,
CMDA, Egmore, Chennai-600 008.

+1cc to M/s.P.Veena Suresh Advocate SR.NO.42862

+1cc to M/s.Aniruth Krishnan Advocate SR.NO.43081

W.P. No.5696 of 2020

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SDR 12/02/2021