IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2021

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Review Appliation No.110 of 2020
in
W.P.No.25119 of 2019
&
Review Application No.111 of 2020
in
W.P.No.25450 of 2019

Review Appliation No.110 of 2020

M/s.Sri Ayyappan Constructions
Rep. By Managing Partner
Mr.Ayyappan
No.34 Mangal Valagham
Uma Nagar 4th Cross
M.C.Road, Thanjavur 613 007. .. Petitioner

Vs.

1. The Chief Engineer
   NABARD and Rural Roads
   Highways Department
   Chennai – 600 032.

2. The Superintending Engineer Highways
   NABARD and Rural Roads Circle
   Post Box No.816, A12/3 & 3 & 4
   Samathi School Street, Kaja Nagar
   Trichy – 620 020.

3. The Divisional Engineer
Thanjavur Highways
NABARD and Rural Roads
Thanjavur – 613 001

4.The Superintendent of GSTS Central Excise (HPU)
No.1, Foulk's Compound
Anani Medu
Salem – 636 001 .. Respondents

Review Application filed under Article 226 of the Constitution of India read with Section 114 of CPC to review the order in W.P.No.25119 of 2019 dated 27.08.2019 to include para 5, 9 to 12 of the G.O. For implementation and payment of difference as directed prior and pass such further or other order as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case.

Review Application No.111 of 2020
M/s.Sri Ganapathy & Co.
A registered Partnership Firm
Rep. By Mr.B.Muruganantham, Partner
Having office at No.352A, Gandhipuram
Udumalai Road, Dharapuram – 638 656 .. Petitioner

Vs.

1. Chief Engineer (H)
Construction and Maintenance
Guindy
Chennai-600 025

2. Special Chief Engineer (H)
Construction and Maintenance
Tiruppur.

3. Divisional Engineer (H)
Construction and Maintenance
Dharapuram

4.The Superintendent of GSTS Central Excise (HPU)
No.1, Foulk's Compound
Anani Medu
Salem – 636 001. .. Respondents

Review Application filed under Article 226 of the Constitution of India read with Section 114 of CPC to review the order in W.P.No.25119 of 2019 dated 27.08.2019 to include 9 to 12 of the G.O. for implementation and payment of difference as directed prior and pass such further or other order as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case.

For Applicant in both Rev. Apln.	:	Mr.G.Surya Narayanan
For Respondents in both Rev. Apln.	:	No Appearance

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COMMON ORDER

This common order will dispose of both the captioned Review Applications.

2. Review Application No.110 of 2020 (senior Review Application) has been filed seeking review of order dated 27.08.2019 made in

W.P.No.25119 of 2019 wherein the operative portion is contained in Paragraph 5, which reads as follows:

> *'5. In the light of the undisputed position that this matter is directly and squarely covered by the aforesaid order, this writ petition is disposed of with the same set of observations and directions contained in the aforesaid order more particularly paragraphs 21 and 22 thereat. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.'*

3. Aforementioned operative portion contained in Paragraph 5 takes us to Paragraphs 21 and 22 of common order dated 01.08.2019 made in W.P.Nos.21196 and 21198 of 2019, which read as follows:

> *'21.Therefore, the parties will now stand governed by paragraph 10(a) and paragraph 12 of aforesaid G.O.Ms.No.296 Finance [Salaries] Department, dated 09.10.2017.*
>
> *22. The exercise of quantification qua para 10(a) shall be completed by both the parties as expeditiously as possible within 12 weeks from the date of receipt of a copy of this order. Though obvious, it is made clear that work under the aforesaid contract shall continue without being impeded by this exercise.'*

4. Review Application No.111 of 2020 (junior Review Application) has been filed seeking review of order dated 28.08.2019 made in W.P.No.25450 of 2019 wherein also the operative portion is Paragraph 5, which reads as follows:

> *'5. Therefore, this writ petition will also be disposed of in accordance with the same set of directions as in the earlier order. The following order is passed:*
>
> *a) Parties hereto will now stand governed by paragraph 10(a) and paragraph 12 of aforesaid G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017.*
>
> *b) The exercise of quantification qua para 10(a) shall be completed by both the parties as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order. Though obvious it is made clear that work under the aforesaid contract shall continue (if not already completed) without being impeded by this exercise.'*

5. To be noted, the aforementioned order in W.P.No.25450 of 2019 dated 28.08.2019 had also been made on the common submission made by both sides that the matter is covered by order dated 01.08.2019 in W.P.Nos.21196 and 21198 of 2019.

6. In the original writ orders, paragraphs 3 to 22 of 01.08.2013 order have been extracted in Paragraph 3 of W.P.No.25119 of 2019 and paragraphs 5 to 20 of 01.08.2013 order have been extracted in paragraph 4 of W.P.No.25450 of 2019 order.

7. The entire matter turns on 'G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017' ('said GO' for the sake of brevity).

8. Mr.G.Surya Narayanan, learned counsel on record for Review Applicant in both captioned applications submits that the earlier order dated 01.08.2019 made in W.P.Nos.21196 and 21198 of 2019 has since been complied by the State. This submission is recorded.

9. Before proceeding further, it is necessary to trace the trajectory the captioned Review Applications have taken before me. This can be done by reproducing proceedings in previous 5 listings (18.03.2021, 23.03.2021, 30.03.2021, 01.04.2021 and 09.04.2021):

*'**<u>Proceedings dated 18.03.2021</u>***

Mr.G.Surya Narayanan, learned counsel for review applicant is before me, but there is no representation for the State, with the intention of giving an opportunity to the respondents, list this matter on

23.03.2021.'

'Proceedings dated 23.03.2021

Mr.G.Surya Narayanan, learned counsel on record for review applicant is before me, but there is no representation for the State i.e., respondents today also. To be noted, there was no representation for the State in the previous listing on 18.03.2021. However, with the intention of giving another opportunity to the respondents, list this matter on 30.03.2021.'

'Proceedings dated 30.03.2021

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 23.03.2021.

2.Mr.G.Surya Narayanan, learned counsel on record for review applicant in both captioned Review Applications is before this Virtual Court, but there is no representation for State today also though the name of the Additional Government Pleader is shown in the cause list. With the intention of giving an opportunity to the respondents and State counsel, list this matter day-after-tomorrow i.e., 01.04.2021.'

***'Proceedings dated 01.04.2021**:*

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 30.03.2021.

2.Mr.G.Surya Narayanan, learned counsel on record for review applicant in both captioned Review Applications is before this Virtual Court, but there is no representation for State today also though the name of Additional Government Pleader is shown in the cause list.

3. As there has been no representation for State for the fourth consecutive hearing i.e., 18.03.2021, 23.03.2021, 30.03.2021 and today (01.04.2021), it is made clear that next listing shall be peremptory.

List on 09.04.2021.'

*'**Proceedings dated 09.04.2021***

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 30.03.2021.

2.Mr.G.Surya Narayanan, learned counsel on record for review applicant in both captioned Review Applications is before this Virtual Court, but the position is same with regard to State. It is rather unfortunate that there is no representation for State on 18.03.2021, 23.03.2021, 30.03.2021 and today [four consecutive listings].

3. The above is the position today though it was made clear in the last listing that today's listing shall be peremptory.

4. Be that as it may, with the intention of giving one last opportunity, list on 16.04.2021.'

10. It is rather unfortunate that no State counsel has represented this matter for five consecutive listings in spite of adequate opportunities being given, it was *inter alia* made clear that last two listings are peremptory and to be noted all proceedings have been duly uploaded in the official website as is

always done by this Court. Therefore, captioned review applications are being dealt with on their own merits and in accordance with law.

11. Short point, which learned counsel for Review Applicants projects is that quantification has been directed to be made by applying Paragraph 10(a) of said GO. In the contract leading to 01.08.2019 common order in W.P.Nos.21196 and 21198 of 2019, it is submitted that the writ petitioner had furnished break up of taxes qua bid value at the time of submission of tenders, whereas in the contract pertaining to orders which are sought to be reviewed, they are bulk contracts and consolidated values had been quoted. Therefore, the computation may have to be made by applying sub-paragraphs (b) or (c) of paragraph 10 is learned counsel's say and he submits that if the orders are reviewed to say that the computation can be made in accordance with sub-paragraphs (a), (b) or (c) of Paragraph 10 of said GO, it will serve the purpose, as otherwise, the order cannot be worked. This Court notices that if such computation is made and it is observed that Paragraph 11 of said GO will apply, the interest of Revenue is protected as Paragraph 11 of the G.O reads as follows:

'11.The value of the subsumed tax may finally be served at

values estimated in (a) or (b) or (c), whichever is higher.'

12. This takes us to the review that is being sought for. No elucidation is required to say that review can be resorted to when some matter or evidence which after exercise of due diligence was not either within the knowledge or could not be brought to the notice of the Court at the time of hearing by the parties or on account of some mistake or error apparent on the face of the record or any other sufficient reason. In this case, this Court finds that captioned review applications qualify under 'sufficient reason' limb as counsel for review applicant and State counsel (in the writ hearing) while agreeing that the matter is covered by an earlier order have missed noticing that while computation in earlier common order dated 01.08.2019 had to be made by applying paragraph 10(a), in the instant case computation has to be made in accordance with sub-paragraphs (b) or (c) of Paragraph 10. To be noted this computation method makes no difference to the principle qua covered order. In any event, as already alluded to supra because of Paragraph 11 of said GO, if the three modes of computation are applied and figures arrived at, whichever figure is higher is made applicable and therefore the interest of Revenue is protected.

13. Owing to the narrative, discussion and dispositive reasoning order in W.P.No.25119 of 2019 (subject matter of senior review application) is reviewed by saying that inter alia operative portion (paragraph 5) will stand reviewed and parties will now stand governed by sub-paragraphs (a), (b) or (c) of Paragraph 10, Paragraph 11 and Paragraph 12 of said G.O, which means any of the three modes of computation set out in Paragraph 10 which is relevant can be applied and if more than one mode of sub-paragraphs is applicable, highest value will operate owing to paragraph 11.

14. In order dated 28.08.2019 made in W.P.No.25450 of 2019, which is subject matter of junior review application, the operative portion (paragraph 5) will stand reviewed and the parties will be governed by Paragraphs 10, 11 and 12 of said G.O, computation shall be made in accordance with applicable sub-paragraphs of said G.O and the higher value will be adopted vide Paragraph 11.

15. The above exercise shall now be completed within twelve (12) weeks from the date of receipt of a copy of this review order and though obvious it is made clear that work under contracts concerned will continue (if not already completed), without being impeded by this exercise.

Review applications disposed of on above terms. There shall be no order as to costs.

20.04.2021

Speaking order: Yes/No
Index: Yes/No
gpa

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