IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 25.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.25193 of 2021

M/s.A.T.G.& Co.,
Rep.by its Managing Partner Mr.Balasubramaniam
PWD Contractor, No.4/25, Reddivalasu, Olappalayam
Post, Kangayam Taluk, Tiruppur – 638 701. ... Petitioner

-Vs-

1.The Joint Registrar of Co-opertive Societies
Tiruppur Region, Tiruppur – 641 601.

2.The Assistant Commissioner (GST)
No.260/261, Tiruppur Main Road
Kangeyam – 638 701.

3.The Primary Agricultural Co-operative Societies Bank
Represented by its President, No.1315,
Pachapalayam, Pachapalayam, Kangayam. .. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st and 3rd respondents herein to pay the applicable GST to the petitioner pertaining to the work order dated 11.03.2019 issued by the 3rd respondent which is the statutory dues actually payable to the 2nd respondent by the petitioner.

For Petitioner	:	Mr.T.V.Suresh Kumar
For Respondents	:	Mr.S.Ravichandran, Additional Government Pleader – for RR 1 and 2
		Ms.Amirtha Poongodi Dinakaran Government Advocate – for R3

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the 1st and 3rd respondents herein to pay the applicable GST to the petitioner pertaining to the work order dated 11.03.2019 issued by the 3rd respondent which is the statutory dues actually payable to the 2nd respondent by the petitioner.

2. That the petitioner is a Contractor and it has taken the work to construct the new office building for the third respondent Society. The said contract and work order was given pursuant to the tender dated 10.03.2019 to the petitioner. Accordingly, the work was completed and the construction was over.

3. However, it is to be noted that, in the estimation given for construction of the office building, the GST component has not been included. However, for the said construction, the contractor ie., the petitioner has to pay 12% GST to the Tax Authorities concerned and therefore, in order to add the GST component in the total estimate, the petitioner had already made a request to the respondents particularly the third respondent.

4. The third respondent also, having understood the omission of allocating the fund for the payment of GST at the rate of 12%, passed a resolution on 20.09.2019, whereby, they resolved that the 12% GST for the estimate of Rs.20 Lakhs comes to Rs.2,40,000/- Therefore, in order to pay the said amount to the petitioner ie., contractor, the third respondent society, by the said resolution, requested the first respondent to give permission to spend money from out of the third respondent Society funds. In the mean

while, completion certificate also has been issued to the petitioner for having completed the building construction work. Despite these developments, since the GST amount has not been paid to the petitioner, they had given a representation on 17.05.2021, to the first respondent and the said representation also since has not been considered, the petitioner has come before this Court by filing the present Writ petition with the aforesaid prayer.

5. Heard Mr.T.V.Suresh Kumar, learned counsel for the petitioner, who, having reiterated the aforesaid facts, seeks the indulgence of this court to issue a direction to the respondents especially the first respondent to consider the representation of the petitioner and decide the same.

6. Heard Mr.S.Ravichandran, learned Additional Government Pleader for the first and second respondents and Ms.Amirtha Poongodi Dinakaran, learned Government Advocate appearing for the third respondent. The learned counsel for the third respondent would submit that, with regard to the payment of GST concerned, the Society had already passed a resolution and it has been forwarded to the first respondent unless and until the first respondent gives permission to spend the money from the funds of the Society towards GST amount of the petitioner as resolved by the third respondent Society dated 20.09.2019, the said amount cannot be spent from the funds of the third respondent Society, she contended.

7. I have considered the rival submissions made on both sides and perused the materials available on record.

8. Insofar as the payment of GST is concerned, it is a mandatory one and since it is quantified as 12% of the estimate amount, the said GST also should have been included in the total estimate amount. However, when they fixed the total estimate amount as Rs.20 Lakhs for the construction of the building of the third respondent Society, since they have not included 12% GST, that has been specifically pointed out and asked for by the petitioner and the third respondent Society also, after having realized the said fact, passed a resolution on 20.09.2019, by which they made only a request to the first respondent to give direction to the third respondent Society to release the said amount of Rs.2,40,000/- being 12% of the GST amount. Even that request seems to have been so far not considered and orders not have been passed by the first respondent. In this regard, though a detailed representation has been submitted by the petitioner on 17.05.2021, that was also since not considered, this Court feels that, a direction can be given to the respondents, especially the first respondent to give a direction to the third respondent to consider the representation of the petitioner dated 17.05.2021 and pass orders thereon with regard to the plea raised by the petitioner therein.

9. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

That there shall be a direction to the first respondent to consider the representation of the petitioner dated 17.05.2021 with regard to the plea of the petitioner to get the GST amount payable by the respondents for the construction of the new office building for the third respondent Society, by the petitioner being a Contractor, in the light of the resolution passed by the third respondent Society dated 20.09.2019, and pass orders thereon, on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs.

25.11.2021

Index : Yes/No
Internet : Yes/No
KST

To

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R.SURESH KUMAR, J.

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