IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 14883 of 2021

Mahendra Oram .... ***Petitioner***
Mr. Achyutananda Pattnaik, Advocate
-versus-
State of Odisha & Others .... ***Opposite Parties***
None for O.P. Nos.1 to 4
Mr. Sunil Mishra, ASC for CT & GST Organization for O.P. No.5

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
25.08.2022

Order No.

03.

1. This matter is taken up through virtual/physical mode.

2. Petitioner has prayed for the following reliefs by way of the afore-noted writ petition:-

> *"(i) Declare the circular dated 07.12.2017 of the Opposite Parties under Annexure-2 as ultravires, illegal, unconstitutional and violative the fundamental rights of the Petitioner on account of the taxes being shared and borne by the Petitioner post the enactment of the Goods and Services Tax Act, 2017 thereby infringing the provisions of Goods and Services Tax Act, 2017;*
>
> *(ii) Further be pleased to pass an appropriate order directing the Opposite Parties to restitute the benefits to the Petitioner along with interest and compensation within a stipulating period in terms of the order passed by the Hon'ble High Court under Annexure-3."*

3. It is the case of the Petitioner, works contractor, that having been awarded the work "Special Repair to N.H.-143 from K.M. 0/00 to K.M. 125/800", he executed agreement bearing No. 05 P1 of 2017-18 with Executive Engineer, National Highway Division, Rourkela. The Executive

Engineer, National Highway Division, Rourkela has issued a letter No.896—W/E, dated 29th August, 2017 vide Annexure-1 which is to the following effect:-

> *"In pursuance to having entered into a contract with this Division for the above noted work under Agreement No.05 Pt of 2017-18, dtd.29.08.2017 for an amount of Rs.1,28,62,942.001 the site of work is hereby handed over to you for execution. The date of commencement is 29th August, 2017 and stipulated date of completion is 28th November, 2017. No deviation in quantity should be made without the written permission from the undersigned. You are requested to please execute the above noted work taking detailed instructions from the Assistant Engineer, N.H.Sub-Division, Rourkela."*

The document enclosed to said letter indicates that the work was required to be executed commencing from 29th August, 2017 and ending on 28th November, 2017. Therefore, the entire work related to post-introduction of GST statute, *i.e.,* after 1st July, 2017. By way of pleading, it is stated that pursuant to clause 1(iii) of the Government of Odisha in Finance Department vide Memo No.FIN-CT1-TAX-0045-2017-36116/F dtd.07.12.2017, the Petitioner was instructed to submit bills by reflecting GST component separately in respect of the work executed after 01.07.2017, *i.e.*, the date of introduction of the Central Goods and Services Tax Act/the Odisha Goods Services Tax Act, 2017 (for short "the CGST/OGST Act"). It is further submitted by the Petitioner that the present matter is required to be considered in the light of order dated 1st February, 2021 passed by this Court in the case of *Muna Pani Vrs. State of Odisha & Others, W.P.(C) No. 3465 of 2021*.

4. It is submitted by the petitioner that by virtue of clause 1(iii) of Finance Department Memorandum dated 7th December, 2017 the petitioner is required to show the GST component separately in its bills in respect of works executed after 01.07.2017. This leads to additional burden of tax to be borne by the petitioner.

5. *Per contra*, counsel for the Opposite Parties argued that the writ petition challenging the *vires* of Office Memorandum dated 1st July, 2017 is not maintainable inasmuch as the same has been revised by issue of Office Memorandum bearing No.38535-FIN-CT1-TAX-0045-2017/F., dated 10.12.2018. It is submitted that very many works contractors on the introduction of the CGST/OGST Act with effect from 01.07.2017 challenged Office Memorandum bearing No.36116-FIN-CT1-TAX-0045-2017/F., dated 07.12.2017. During the pendency of the writ petitions, the Government of Odisha in Finance Department brought out Revised Guidelines for works contract *vide* Office Memorandum bearing No.38535-FIN-CT1-TAX-0045-2017/F., dated 10.12.2018. This Court disposed of said writ petition(s), one of them being *W.P.(C) No. 6178 of 2018 : All Orissa Contractors Association Vrs. State of Odisha, vide* Order dated 12th December, 2018 and extracting the Revised Guidelines *in extenso,* held as follows:

> *"*** In that view of the matter, the Petitioner shall make a comprehensive representation before the appropriate authority within four weeks from today ventilating the grievance. If such a representation is filed, the authority will consider and dispose of the same, in the light of the aforesaid revised guidelines dated 10th December, 2018 issued by the Finance*

Department, Government of Odisha, as expeditiously as possible, preferably by 31.03.2019.

If the petitioner(s) will be aggrieved by the decision of the authority, it will be open for the petitioner(s) to challenge the same.

No coercive action shall be taken against the petitioner(s) till 31.03.2019.

The writ petition is disposed of accordingly."

5.1. Subsequently aforesaid direction of this Court being carried out by the authority concerned, amongst many, one of such works contractors *viz. Harish Chandra Majhi*, by way of petition being W.P.(C) No.14924 of 2020, challenged the Revised Guidelines *vide* Office Memorandum No.38535-FIN-CT1-TAX-0045-2017/F., dated 10.12.2018. This Court disposed of said case *vide* Judgment dated 07.06.2021 [reported as *Harish Chandra Majhi Vrs. State of Odisha and others, 2021 SCC OnLine Ori 643 = (2021) 51 GSTL 113 = (2021) 93 GSTR 354 (Ori)*] by observing thus:

> *"1. The Office Memorandum dated 10 December, 2018 of the Finance Department under Annexure-3 prescribing guidelines for the implementation of GST (Goods and Services Tax) in works contract in post-GST regime with effect from 1 July, 2017, the Revised Schedule of Rates-2014 (Revised SoR-2014) under Annexure-8 and the demand notice issued* under *Section 61 of the Odisha Goods and Services Act (OGST Act) has been questioned in the present writ petition and connected batch of cases. The prayers in the present petition read as under:*

'i. why the action and decision of the Opp. Parties shall not be declared illegal, unconstitutional and violative of legal right of the Petitioner on account of the Taxes being shared and borne by the Petitioner on post enactment Goods and Services Tax Act, 2017?

ii. the Opp. Parties shall not be directed to restitute the benefit of GST to the Petitioner along with interest within a stipulated period in respect of work in which the estimated was prepared under VAT law.

iii. the Office Memorandum dated 10.12.2018 issued by the Opp. Party No. 4 under Annexure-3 shall not be declared illegal, arbitrary, unreasonable and same shall not be quashed.

iv. further the process adopted by the Opp. Parties in preparation of revised SoR dated 15.09.2017 under Annexure-8 shall not be declared illegal, arbitrary and same shall not be quashed.

v. why the notice issued by the Opp. Party No. 9 under Annexure-9 shall not be declared illegal, arbitrary and same shall not be quashed?

vi. why the Opp. Party shall not be directed to prepare a fresh schedule of rates considering rapidly change of rate and price and calculate the differential amount of GST on the contract in which estimate was prepared under VAT?'

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11. The basic price of materials as per SoR-2014 was inclusive of VAT, entry tax and other tax components. Since 1 July 2017 GST is payable on *the value of the contract, the value of tax components in the price of the materials in SoR-2014 was revised and reduced by excluding such tax components prevalent during pre-GST period. As such, the revised SoR-2014 was issued on 16 September, 2017.*

12. *The Petitioner complains that the procedure adopted in the preparation of the revised SoR-2014 dated 16 September, 2017 (Annexure-8) is illegal, arbitrary and contrary to the provisions of Odisha Public Works Department Code (OPWD Code) and that the rates have not been determined on the basis of actual rates prevailing in different areas of the State.*

13. *The said submission of the Petitioner is not found acceptable because the rates of materials are to be maintained uniformly all over the State. Further, if there is any difference in the actual rate and scheduled rate in any particular area, the Petitioner could submit the same to the employer and this has nothing to do with the GST.*

14. *A further ground urged on behalf of the Petitioner is that the tender was floated prior to 1 July, 2017. The price quoted for the items and labour was as per the then prevailing market rate. Therefore, the revised SoR-2014 brought into force on 1 July, 2017 at a reduced rate is illegal and discriminatory.*

15. *This contention of the Petitioner is not found convincing for the reason that, first, nothing has been brought on record to show any comparison of market rate in 2014 when SoR-2014 was issued and the market rate in 2017 when revised SoR was issued. Secondly, no dispute has been raised against the rates mentioned in pre-revised SoR-2014. The price difference in the revised SoR-2014 is to the extent of the changed tax amount only.*

Undoubtedly, the rates in revised SoR-2014 are applicable for the works all over the State.

16. *Works contract is a composite supply of services and is taxable under the GST. The earlier SoR-2014 issued on 10 November, 2014 was inclusive of taxes like Central Excise Duty, Service Tax, VAT, Entry Tax etc. After the GST regime only some of the tax components needed to be included. This necessitated a revision of SoR-2014 to arrive at the GST exclusive work value. The GST component is to be added to the work value. As the revised SoR is exclusive of the tax components, the estimated value of the work gets reduced to that extent. This was prepared under the recommendation of a Code Revision Committee and after verification of tax rate in the pre-GST period of each of the items including the hire charges of machineries.*

***

29. *In the instant case, three components of the tax, i.e., subject of tax, person liable to pay the tax and rate of tax has been clearly defined in the statute. The OM dated 10th December, 2018 only prescribes the manner/procedure of calculation to determine the amount of tax in a particular eventuality in the transitional period of migration to GST Act with effect from 1st July, 2017. Consequently, the Court finds no merit in the Petitioner's challenge to the said OM in law."*

6. As this Court taking note of subsequent development has already set at rest the issues raised in the present writ petition, the writ petition questioning the validity of Office Memorandum No.FIN-CT1-TAX-0045-2017-36116/F., dated 07.12.2017 does not survive.

7. The question whether, in fact, any amount is owed to the Petitioner by the Opposite Parties on account of GST deducted from its bills or *vice versa*, has become a highly disputed question of fact. The claim of the Petitioner ultimately, in simple terms, is one for money which it seeks as reimbursement from the Opposite Parties. It is not possible for this Court in its writ jurisdiction under Article 226 of the Constitution to calculate on a case to case basis which component of the work executed by the Petitioner for reimbursement on account of GST and which is not. This being a disputed question of fact, the Court declines to undertake this exercise in the writ jurisdiction and leaves it to the Petitioner to seek other appropriate remedies available to him in accordance with law. In such proceedings it would be open to either of the parties to rely on the pleadings of the present petition. This is what has been precisely laid down in the case of *M/s. Maa Vaishno Devi Construction Vrs. The Executive Engineer, Bhubaneswar R&B Division-IV, Bhubaneswar, W.P.(C) No.7956 of 2019 vide Order dated 22.02.2021*.

8. In a case being *Sri Lalit Kumar Mohanty Vrs. State of Odisha, W.P.(C) No. 26646 of 2021* disposed of on 4^{th} April, 2022, the propriety of Revised Guidelines vide Office Memorandum dated 10^{th} December, 2018 came up for consideration before this Court. This Court while disposing of the said writ petition declined to exercise writ jurisdiction. In the result, in view of the aforesaid reasons, this Court finds no ground to exercise its extraordinary jurisdiction under Article

226 of the Constitution of India and hence, the writ petition deserves to be dismissed.

9. Accordingly, the writ petition is dismissed.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant *August 25*, 2022
Cuttack