



W.P.Nos.30891, 30894 & 30897 of 2019 &
WMP.Nos.30980, 30982 & 30985 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.30891, 30894 & 30897 of 2019 &
WMP.Nos.30980, 30982 & 30985 of 2019

W.P.No.30891 of 2019:

M/s.J.K.Constructions,
A registered partnership Firm,
Rep. by G.Prasad, Partner
having office at No.6/1, New Katpadi Road,
near Hotel River View, Vellore – 632 004.

... Petitioner

Vs

- 1.The Chief Engineer,
National Highways, HRS Campus,
No.76, Sardar Patel Road,
Guindy, Chennai – 600 025.
- 2.The Divisional Engineer, National Highways,
Thulasingam Street, Vellore – 632 001.
- 3.Superintending Engineer,
National Highways,
Koyambedu, Chennai.
- 4.The Superintendent of GST,



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Central Revenue Building,
Barrack Maidan, Officers Line,
Vellore – 632 001.

5.The Senior Intelligence Officer,
Directorate General of Goods and Service Tax Intelligence,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in R.O.C.No.26843/2018/DA/dated 31.01.2019, quash the same and direct the respondent Nos.1 to 3 to pay the difference in tax viz., G.S.T. as per G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 to pay the GST to the petitioner in respect of contract – improvements to Gudiyatham – Gadambur – Kailasagiri – Vaniyambadi Road (SH-130) km 22/570-30/4 and 37/6-42/0.

W.P.No.30894 of 2019:

M/s.J.K.Constructions,
A registered partnership Firm,
Rep. by G.Prasad, Partner
having office at No.6/1, New Katpadi Road,
near Hotel River View, Vellore – 632 004.

... Petitioner

Vs

1.The Chief Engineer,
PWD/WRD, Chennai Region,
Chepakkam, Chennai – 600 005.



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- 2.The Superintending Engineer, PWD/WRD,
Vellar Basin Circle, Cuddalore.
- 3.The Executive Engineer, PWD/WRD,
Vellar Basin Division,
Vridhachalam.
- 4.The Superintendent of GST,
Central Revenue Building,
Barrack Maidan, Officers Line,
Vellore – 632 001.
- 5.The Senior Intelligence Officer,
Directorate General of Goods and Service Tax Intelligence,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent Nos.1 to 3 to pay the GST to the petitioner in respect of L.S.Agreement No.VBC/2017-2018 as per G.O.Ms.No.296, Finance (Salaries) Department, dated 09.10.2017.

W.P.No.30897 of 2019:

M/s.J.K.Constructions,
A registered partnership Firm,
Rep. by G.Prasad, Partner
having office at No.6/1, New Katpadi Road,
near Hotel River View, Vellore – 632 004.

... Petitioner

Vs



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- 1.The Chief Engineer, (H)
Construction and Maintenance,
HRS Campus, No.76, Sardar Patel Road,
Guindy, Chennai – 600 025.
- 2.Special Chief Engineer (H),
Construction and Maintenance, Chennai – 600 006.
- 3.The Divisional Engineer,
Construction and Maintenance (Highways),
C.N.Annadurai Road, Vaniyambadi, Vellore.
- 4.The Superintendent of GST,
Central Revenue Building,
Barrack Maidan, Officers Line,
Vellore – 632 001.
- 5.The Senior Intelligence Officer,
Directorate General of Goods and Service Tax Intelligence,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in R.O.C.No.460/2018/DA/dated 18.01.2019, quash the same and direct the respondent Nos.1 & 2 to pay the difference in tax viz., G.S.T. as per G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 to pay the GST to the petitioner in respect of DE(H), Vaniyyampadi CRIDP 2016/2017 Package 41.



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(In all W.P.'s)

For Petitioner : Mr.G.Suryanarayanan

For Respondent : Mr.Silambannan,
Additional Advocate General
assisted by Mr.Veda Bhagath Singh–R1 to R3

Mr.Rajnish Pathiyil,
Senior Panel Counsel – R4 & R5

ORDER

Mr.Rajnish Pathiyil, learned Senior Panel Counsel accepts notice for the newly impleaded respondent (R5).

2. The petitioner is a contractor for National Highways and Public Works Department (PWD) of the State of Tamil Nadu. The issue in these writ petitions relates to liability to commercial taxes post the onset of Goods and Services tax, with effect from 01.07.2017, .

3.The contracts in respect of which the liability arise had admittedly been entered into on 17.04.2017, 16.04.2017 & 31.03.2017 in W.P.Nos.30891, 30894 & 30897 of 2019 respectively, W.P.Nos.30891 and 30897 of 2019 with the Highways department and W.P.No.30894 of 2019 with the PWD.



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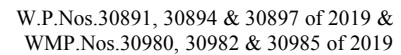
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4. To ease transition from the era of Value Added Tax (VAT) to Goods and Service Tax (GST), and in the interests of clarity, the Finance Department has issued two Government Orders viz., one in G.O.Ms.No.264, Finance (Salaries) Department dated 15.09.2017 and the second in G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017.

5. The aforesaid Government orders set out the methodology of computation of GST liability in respect of contracts executed prior to 01.07.2017 and make it clear that any difference in liability shall be made good by the purchaser, in this case, the Highways and Public Works departments.

6. The turnover from contract was liable to VAT at the rate of @ 2% prior to 01.07.2017 and 12% post 01.07.2017 under the Goods and Services enactment. It is the petitioners case that the difference in tax liability must be met by the respective purchasers as per the government orders as aforesaid.

7. G.O.Ms.No.264 dated 15.09.2017 and G.O.Ms.No.296 dated 09.10.2017 refer to the methodology of computation in respect of contracts that were subsisting as on the date of interruption on GST. Thus, there is no doubt in my mind, and learned Additional Advocate General appearing for the learned Government Pleader for the Highways and Public Works Department also



10. Considering the necessity to provide for a transparent means of estimating subsumed tax Government direct that the following methodology be adopted for



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estimating the value of subsumed taxes in the contracted value of work:

a. If the supplier has furnished break up of taxes within the quoted value (bid value) at the time of submission of tenders, it shall be taken as the basis for estimating the value of subsumed tax. If, after negotiation, the contracted value is less than the bid value, the tax quoted shall be proportionately reduced to arrive at estimate of the value of subsumed tax. For instance, if the bid value was Rs.50 lakh and the break-up of tax is Central Excise Duty of Rs. 1 lakh and VAT or CGST of Rs.1 lakh, the corresponding subsumed tax as per his break up of taxes is Rs.2 lakh and after negotiation, the contracted value was reduced to Rs.48 lakh, the subsumed tax shall be taken as $\text{Rs.2 lakh} \times 48/50 = \text{Rs. 1.92 lakh}$.

b. In case, the break-up of taxes was not obtained or furnished in the bid document, the supplier may be asked to furnish break-up of the taxes within the contracted amount, giving details and explanations and based on this estimate of total subsumed tax shall be arrived. For instance, if for the contracted amount of Rs.48 lakh in the example above, the supplier states that the Central Excise Duty is Rs. 1 lakh and VAT or CGST is Rs.1 lakh, after checking the reasonability of his claim, the subsumed tax may be arrived at Rs.2 lakh.

c. The estimate of subsumed tax should also be worked out independently from the departmental estimates. Revised Schedule of Rate (SOR) showing basic price and tax components separately are being issued by the Public Works Department. Using the revised SOR, revised departmental estimates for the work without subsumed tax shall be arrived as per normal procedure. The difference between the departmental estimates arrived using earlier SOR with taxes would constitute value of subsumed tax in the value of work. For instance, if the Estimate arrived at using the revised SOR without subsumed taxes is Rs.45 lakh and that with earlier SOR with taxes is Rs.50 lakh, the value of subsumed taxes in the



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value of work is Rs.5 lakh. If the contracted value for this same work of Rs.50 lakh is Rs.55 lakh, i.e. with tender premium of Rs.5 lakh, then the value of subsumed tax may be proportionately enhanced (or reduced in case of tender discount or minus tender) as follows: Rs.5 lakh x 55/50 = Rs.5.5 lakh. This method is considered as a good proxy for the actual value of subsumed tax for the purpose of determining the value of supply for payment to the supplier along with taxes under the GST laws.

11. In light of the aforesaid and seeing as the orders impugned in W.P.Nos.30891 & 30897 rejecting the request of the petitioner for application and adoption of the computational methodology of the aforesaid G.O.'s, the same are quashed. Mandamus as sought for in W.P.No.30894 of 2019 is issued.

12. The petitioner shall be called upon to appear before the respondent (Highways and PWD), and an order passed by them computing the tax liability in line with the aforesaid Government Orders. As regards the impleadment of the Central GST authority, the petitioner alleges that there have been coercive recovery effected of tax demands in excess of 2% that they are liable to pay.

13. Upon determination of the liability by the petitioner and the respondents conjointly and as above, any recovery affected from the petitioner contrary to the methodology set out under the aforesaid G.O.'s shall be refunded to the petitioner.



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14. The Writ Petitions are allowed in the above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

29.09.2022

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Index : Yes

Speaking Order

To

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National Highways, HRS Campus,
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Guindy, Chennai – 600 025.
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DR.ANITA SUMANTH, J.

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