BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD)No.1267 of 2021
and C.M.P.(MD)No.5316 of 2021

1. The Chief Engineer,
TWAD Board,
No.1/1, Samabakulam,
Ganesh Nagar, Opp. Mattuthavani Bus Stand,
Melur Road, Madurai-625 007.

2. The Executive Engineer,
TWAD Board, Sewerage Division,
Karaikudi. .. Appellants/Respondents 1&2

Vs.

1. SUBAYA CONSTRUCTIONS COMPANY LIMITED,
Rep. by its Director S.Meenakshi,
New No.21 (Old No.26),
Soundarapandian Street,
Ashok Nagar, Chennai-600 083. .. Respondent 1/Petitioner

2. The Superintendent of GST,
Vadapalani North Range,
Chennai. .. Respondent 2/Respondent 3

* * *

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.03.2021 in W.P.(MD)No.15967 of 2020.

Prayer in WP(MD). 15967/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directin the respondents to consider the various representations issued by the petitioner to the respondents and direct the respondents to pass appropriate order in terms of GO MS No.296 dt 09.10.2017 and in tune with Judgement of this Hon`ble Court in W.P. Nos.21196 and 21198 of 2019 dt 01.08.2019 and consequentially direct the respondents to enter inti a fresh supplemental agreement for the purpose of GST.

For Appellants : Mr.B.Vijay Karthikeyan
Standing Counsel

For Respondents : Mr.A.Sivaji for R1

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The respondents 1 and 2 in the writ petition instituted this appeal against the order of the writ Court allowing W.P.(MD)No.15967 of 2020, which was filed by the first respondent herein.

2. The writ court allowed the said writ petition, after appreciating the factual position and relying upon the order dated 01.08.2019 passed by another learned Single Judge in W.P.Nos.21196 and 21198 of 2019, wherein also, the petitioner is one and the same.

3. The short facts of the case of the writ petitioner before the writ Court was that it entered into a contract with the appellants Board for laying Under Ground Sewerage works for Karaikudi Municipality, Sivagangai District, on 25.01.2016, which includes sales tax component, but due to introduction of GST Regime on and from 01.07.2017, the tax portion of the contract had to be revisited. The Government issued G.O.Ms.No.296, Finance (Salaries) Department, dated 09.10.2017 for this purpose and the applicability as to whether paragraph 10(a) or 10(b) or 10(c) was the subject matter of debate. The writ petitioner's request was not considered necessitating it to institute the petition seeking Mandamus, which was allowed by this Court.

4. The learned Standing Counsel appearing on behalf of the appellants contended that the writ petition was filed by the first respondent herein only to circumvent the issues raised by the GST Department with regard to non-payment of the tax and the resultant interest that may be imposed on them. It is also submitted that the appellants remitted the GST component, which was deducted at 2% on each running bill, with the tax department and they have no due whatsoever. It is submission that the writ Court committed an error in placing reliance on the order date 01.08.2019 made in W.P.Nos.21196 and 21198 of 2019, which was a consent order of another Department and the same cannot be applied to the appellant, blindly. The learned counsel also claimed that the writ Court failed to appreciate the fact that the first respondent had voluntarily entered into a supplementary agreement on 24.05.2018, which has a binding effect and they should not be allowed to raise imaginary submissions.

5. Heard the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

6. The Writ Court relied upon paragraphs 21 and 22 of the order of another learned Single Judge dated 01.08.2019 made in W.P.Nos.21196 and 21198 of 2019, which were filed by the very same petitioner, who is the first respondent herein, against Salem City Municipal Corporation for a similar work. The said paragraphs, as has been reproduced in the impugned order, read as under :

> *"21. Therefore, the parties will not stand governed by paragraphs 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 expeditously 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."*

7. In paragraph 20 of the said order, the learned Single Judge concluded qua dates with respect to the applicability of the subject Government Order in the following manner :

> *"20. Here again, the task in instant writ petition is cut out as there is no disputation that paragraph 10 (a) is applicable up to 30.06.2017 and paragraph 12 is applicable post 30.06.2017, i.e., on and from 01.07.2017. ...."*

8. Admittedly, the said order was not put to challenge and attained finality. Merely because the appellant is not a Corporation, but a Board under the aegi s of the State Government, they cannot claim exemption from the said order, as it is binding on them as well and rightly the writ Court placed reliance on the said order.

9. Though it is stated that the writ petitioner entered into a supplement agreement and they are bound by that, the writ petitioner on the even date of agreement, i.e., on 24.05.2018, addressed a letter to the appellants raising objections, which was followed by the letters dated 29.01.2019, 30.07.2019, 22.08.2019, 18.12.2019, 15.05.2020 and 13.08.2020. But neither there is denial of the receipt of those letters nor the contents and pleadings thereon by the appellants. In such backdrop, the writ Court rightly took note of cumulative circumstances under which, the writ petitioner would have been placed and this Court finds no other reason to interfere with the said finding of the writ Court.

10. Though it is brought to the notice of this Court that the writ petitioner was paid over and above the actual GST, it is for

the parties to workout the amounts, as has been directed by the Writ Court and arrive at a consensus.

11. In the upshot, the Writ Appeal fails and the same is dismissed as devoid of merits upholding the order of the learned Single Judge. The appellants are directed to comply with the directions issued by the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this judgment. The parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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TWAD Board, Sewerage Division,
Karaikudi.

3. The Superintendent of GST,
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Chennai.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-3318[F] dated 01/02/2022)

W.A.(MD)No.1267 of 2021
01.02.2022

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