BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.24670 of 2022
and
W.M.P.(MD)No.18784 of 2022

TPC Infra and Green Energies,
represented by its Managing Partner,
K.Thirukumaran,
No.1, 1st Cross, IRWO Rail Vihar,
K.K.Nagar, Tiruchirapalli-600 021. ... Petitioner

vs.

1.Principal Secretary,
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant / Deputy Commissioner of
GST and Central Excise,
Division -I,
No.1, Williams Road, Cantonement,
Trichy - 620 001.

3.The Deputy Director,
Trichy Regional Unit,
Directorate General of GST Intelligence,
3rd and 4th Floor,
No.47-47A, Heber Road,
Beema Nagar, Trichy - 620 001.

4.The Divisional Engineer (H),
Highways C and M Division,
Chikanna College Road,
Tirupur - 641 602. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 4th respondent to pay the GST amount payable to the Union of India and the State of Tamil Nadu as demanded in Show Cause Notice No. OR No.38/2021-GST, dated 29.06.2022, on the file of the 3rd respondent with regard to Work Orders CR. Nos.116 to 120/2016-17 and DR. Nos.99/2016-17 and CR.Nos.84/2016-17 to 89/2016-17 on the file of the 4th respondent.

For Petitioner	: Mr.J.V.Niranjan
For R1 & 4	: Mr.T.Amjad Khan Government Advocate
For R2 & 3	: Mr.N.Dilip Kumar Senior Standing Counsel assisted by Mr.K.Prabhu Junior Standing Counsel

O R D E R

This writ petition is filed for issuance of a writ of Mandamus, to direct the 4th respondent to pay the GST amount payable to the Union of India and the State of Tamil Nadu as demanded in Show Cause Notice, dated 29.06.2022, on the file of the 3rd respondent with regard to work orders.

2. The brief facts are that the during the 2017, the 4th respondent issued two work orders among various works and the petitioner under took the sanctioned work and completed the same as per the specifications laid down and received an amount of Rs.6,80,53,046/- towards consideration for the same after deduction of tax at source from the 4th respondent. The 3rd respondent called for the records of the petitioner and conducted investigation, wherein the 4th respondent was also summoned and show cause notice dated 29.06.2022 was issued, stating that the services rendered to the State of Tamil Nadu based on the work order would attract GST and accordingly demanded to pay CGST of Rs.43,36,106/- and SGST of Rs. 43,36,106/-. On receipt of the same the petitioner issued notice to the 4th

respondent to pay the amount of Rs.92,72,213/-. Since there was no response from the 4th respondent, the present writ petition is filed.

3. This issue was already considered by the learned Single Judge in W.P.(MD)No.15967 of 2020, dated 08.03.2021, in the case of ***Subaya Constructions Company Vs. Tamil Nadu Water Supply and Drainage Board*** wherein the learned Single Judge has directed the respondent Board to calculate the tax component in the contract price and rework the same in terms of paragraph No. 10(a) of G.O.Ms.No.296, Finance (Salaries) Department, dated 09.10.2017 and the Hon'ble Court has further held as under:

> "*15. At this stage, the learned Standing counsel would draw my attention to paragraph No.11 of the G.O.Ms.No.296, Finance(Salaries) Department, dated 09.10.2017 and submitted that the respondents would undertake the exercise of calculating tax component by applying all the three formulas and the value of the subsumed tax can be arrived at values estimated in (a) or (b) or (c), whichever is higher. The petitioner's counsel made it clear that the petitioner should not be saddled with tax liability. When the petitioner entered into an agreement with the respondent Board, the contract price comprised three components, namely, cost factor, profit margin and tax component. There cannot be any contest regarding the cost factor and profit margin. The tax liability will have to be borne by the*

respondent Board. The respondents are directed to rework the terms of the contract and enter into a revised agreement with the petitioner. The entire exercise shall be concluded within a period of eight weeks from the date of receipt of a copy of this order."

4. Following the said order, this Court is also of the considered opinion that the tax liability ought to be borne by the 4^{th} respondent and this Court is directing the 4^{th} respondent to rework the terms of contract and enter into a revised agreement with the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No **31.10.2022**
Internet : Yes

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To

1.Principal Secretary,
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Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Divisional Engineer (H),
Highways C and M Division,
Chikanna College Road,
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S.SRIMATHY, J

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W.P.(MD)No.24670 of 2022

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