BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.25882 of 2022
and
W.M.P.(MD)No.20014 of 2022

Immanuel & Company,
Represented by its Authorized Signatory,
M.Pitchaiah,
S/o.Murugesan,
4/136-C/1 Harbour Bypass Road,
Near Fisheries College,
Tuticorin – 628 008. ... Petitioner

Vs.

1. The Divisional Engineer (H) C & M,
   Highways Department, State Highways,
   Ettayapuram Road,
   Thoothukudi – 628 002.

2. The Additional Collector / Project Director,
   District Rural Development Agency,
   Collectorate, Korampallam,
   Thoothukudi – 628 101.

3. The Commissioner,
   Thoothukudi City Municipal Corporation,
   No.113, Palayamkottai Road,
   Thoothukudi – 628 001.

4. The Block Development Officer,
   Thoothukudi Panchayat Union,
   Thoothukudi – Tirunelveli National Highways Road,
   Pudukkottai,
   Thoothukudi – 628 101.

5. The Joint Commissioner of GST and Central Excise,
   Tirunelveli Sub Commissionerate,
   Tractor Road,
   N.G.O. 'A' Colony,
   Tirunelveli – 627 007. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the Respondents 1 to 4 to consider the representation of the Petitioner dated 12.08.2022 seeking grant of GST components along with interest to be paid to the 5th Respondent.

For Petitioner	:	Mr.S.Jaikumar
For Respondents	:	Mr.M.Siddarthan Addl. Govt. Pleader for R1,R2&R4 Mr.N.Anand Kumar Standing Counsel for R3 Mr.N.Dilip Kumar Senior Standing Counsel Assisted by Mr.K.Prabhu Junior Standing Counsel for R5

O R D E R

This Writ Petition has been filed to direct the Respondents 1 to 4 to consider the representation of the Petitioner, dated 12.08.2022, seeking grant of GST components along with interest to be paid to the 5th Respondent.

2. The learned counsel for the Petitioner submitted that the Petitioner is a Partnership Firm providing services of land development, site grading, road formation and connected works for various National Highways / State Local Authorities and Private concerns in the State of Tamil Nadu. The Petitioner executes the works as main contractor and also executes work as sub-contractor to other main contractors. He further submitted that the Petitioner was registered under erstwhile Value Added Tax within the State of Tamil Nadu and were also holders of Service Tax Registration till 30.06.2017. The Petitioner migrated to GST and was allotted GST registration. When GST was introduced, the Petitioner had ongoing contracts, i.e., works contracts were entered and works commenced

prior to 01.07.2017 and continued after 01.07.2017. The details of which are given below:

> *"(i) Work for improvement to Junction Improvements, providing protective works, construction of culvert, widening culvert including Reconstruction of Minor Bridge in SH MDR, ODR in Thootukudi (H), C & M Sub division Package 28 by the Divisional Engineer (H) C & M (First Respondent) vide its agreement dated 18.05.2017.*
>
> *(ii) Contract with the District Rural Development Agency, Korampalam, Thoothukudi (Second Respondent) dated 16.05.2017 for execution of improvement, strengthening and maintenance of roads in Thoothukudi District.*
>
> *(iii) Contract with Collector and Chairman DRDA (Second Respondent) dated 15.09.2016 for upgradation and five year maintenance of Road under Package No.23-72 in Ottapidaram Panchayat Union at Thoothukudi District.*
>
> *(iv) Contract with Thoothukudi City Municipal Corporation (Third Respondent) dated 30.06.2017 for raising the existing UGD manhold in Tiruchendur Main Road and contract dated 14.07.2017 for jungle*

> *Clearance and Desilting the buckle canal from Therespuram bridge to sea shore area."*

3. He further submitted that the Petitioner was paying VAT at the rate of 2% as per Section 6 of the Tamil Nadu Value Added Tax Act, 2006. Service tax was not paid since the services were exempted vide Serial Nos. 12 and 13(a) of Notification No.25 of 2012 – ST dated 20.06.2012. There was a change in the rate of tax when GST was introduced and service tax and VAT was subsumed. The rate of tax under GST which started with 18% was reduced to 12% and was enhanced to 18%. It is submitted that variation in the rate with the introduction of GST has compounded the problems for the contractors. As a matter of fact, realising the difficulties faced by the contractors, the Government of Tamil Nadu has also issued two notifications in G.O.(Ms)No.264, Finance (Salaries) Department, dated 15.09.2017 and G.O.(Ms)No.296, Finance (Salaries) Department, dated 09.10.2017, wherein, it has been held that liability under GST regime shall be borne by the procuring entity. The relevant portion is extracted hereunder:

> ***"G.O.MS.264 was issued on 15.09.201****7 which provided that :*

- Since introduction of GST is a major change in taxation law, the government has taken a policy decision that the risk on account of change of tax law in Government works contract due to introduction of GST shall be borne by the procuring entity. The government therefore will notify detailed guidelines for evaluating net change in tax liability on contracts for the purpose of payments to be made to contractors and entering in to supplementary agreements.

- The Public Works Department and Highways Department are in the process of revising schedule of rates to separate out taxes subsumed under the new GST regime from the schedule of rates.

- In order to prevent bills of existing contractors being held up ostensibly due to lack of clarity on treatment of GST, it is directed that all departments and procuring entities shall make on account payment of bills presented by the contractors restricting payment to the value due as per existing contract agreement.

- The payment of final bill in cases where on account payments have been made shall be made only after the notification of guidelines.

***G.O.Ms.296 dated 09.10.2017** which is summarized below:*

- Under works contract entered in to prior to GST, value of subsumed taxes under GST needs to be separated out from the contracted amount to arrive at the value of supply. The key issue is to estimate the value of subsumed taxes carefully and accurately as possible.

- Considering the necessity to provide for a transparent means of estimating subsumed tax, Government direct that following methodology shall be adopted for estimating the value of subsumed taxes.

- In cases where the supplier has furnished break up of taxes with in the quoted 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 the estimate of value of subsumed tax.

- In case, break up of taxes was not obtained or furnished in the bid document, the supplier may be asked to furnish the break up of taxes with in the contracted amount with details and explanations.

- The estimate of subsumed tax should also be worked out independently from the departmental estimates. Revises schedule of rates 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 the value of subsumed tax in the value of work.

- The value of subsumed tax may finally be arrived at values estimated in (a) or (b) or (c) whichever is higher."

4. While so, the Petitioner has been issued with the Show Cause Notice No.60 of 2022 - GST dated 29.06.2022 by the Additional Director, Director General of GST Intelligence, Coimbatore, which has been adjudicated by the 5th Respondent and proposal was made demanding GST of Rs.5,11,38,438/- in terms of Section 74(1) of The Central Goods and Services Tax Act, 2017. As a matter of fact, the show cause notice also makes a reference to G.O(Ms)No.296, Finance (Salaries) Department, dated 09.10.2017, which has been issued by the Government of Tamil Nadu in support of the fact that GST ought to be paid by procuring entities while calling upon the Petitioner to discharge the applicable GST. In the

meanwhile, the Petitioner was served with the notice by the 5th Respondent fixing dates for personal hearing, pursuant to the show cause notice. Two personal hearings have already been granted and the final hearing is fixed on 17.11.2022 by the 5th Respondent. Thereafter, the Petitioner have submitted a representation to the State Government, wherein, it was requested that applicable GST on the Contract may be worked out and GST may be released to the Petitioner without any delay. However, the said representation is stated to be pending before the Respondents. The Petitioner requested the GST authorities not to initiate the proceedings until the disposal of the representation.

5. In the circumstances, this Court is of the view that the Respondents 1 to 4 shall consider the representation of the Petitioner dated 12.08.2022, on its own merits and pass appropriate orders in accordance with law, within a period of four weeks from today. It is also open to the Petitioner to submit before the GST authorities seeking further time in view of the pendency of the representation. If such request is made, the adjudicating authority shall dispose of the same taking into account the

pendency of representation before the Respondents 1 to 4. It is made clear that this Court has not expressed any view with regard to the merits of the representation and it is open to the Respondents 1 to 4 to consider the representation on its own merits.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

16.11.2022

Index : Yes / No
Speaking Order : Yes / No

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To

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MOHAMMED SHAFFIQ, J.

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