AD-21
Ct No.09
07.12.2023
TN

WPA No. 19635 of 2023

Sonex Engineers Co-operative Society Limited
Vs.
West Bengal State Rural Development Agency
and others

Mr. Debasish Ghosh,
Mr. Binayak Gupta

.... for the petitioner

Mr. Sk. Md. Galib,
Mr. Tamal Taru Panda

.... for the State

1. Learned counsel for the petitioner contends that the petitioner worked as a contractor under a project floated by the respondent no.4, the National Rural Infrastructure Development Agency through the Nodal Agencies of the State of West Bengal.

2. The GST regime intervened. By a Notification dated June 06, 2018, the National Rural Infrastructure Development Agency (NRIDA) categorically intimated that the Standard Bidding Document makes provisions about those taxes which directly relate to Contract Value. It incorporates that whenever the tax structure is changed during the ongoing contract and new law comes into force then the contractor has to be refunded the increased amount of taxes, if any and similarly, recovery is to be made from the contractor if the taxes have decreased.

3. By a subsequent order dated November 20, 2018 the West Bengal State Rural Development Agency, one of the Nodal Agencies, also observed that the contractor will add GST as paid by them with the bill in terms of the relevant paragraph of the Ministry of Rural Development order. While raising their bill and tax invoice post GST, the contractor will collect GST as indicated above and will remit the same to the respective Government.

4. Subsequently, it is contended, intimation was made by the concerned Ministry of Rural Development through the NRIDA (respondent no.4), particularly on December 23, 2019, asking the Principal Secretary/Secretary of Nodal Departments of PMGSY of all States to implement the GST in respect of the Works Contracts.

5. In the said communication, it was mentioned that in spite of the guidelines, the States have not assessed the impact of GST holistically as per the guidelines and instead are referring proposals in a piecemeal manner seeking additional funds.

6. Subsequent thereto, a meeting was held between all stakeholders, including the representatives of the State Nodal Agencies as well as the respondent no.4 and the contractors. A copy of the minutes thereof has been handed over in court today.

7. It transpires therefrom that the parties agreed that the State Nodal Agencies shall take requisite steps and communicate the same to the respondent no.4 for the money to be disbursed immediately.

8. It is argued that even thereafter the State Nodal Agencies are sitting tight over the matter, thereby depriving the petitioner and other contractors from their legitimate dues on account of GST.

9. Heard learned counsel for the petitioner and the State who are represented through counsel.

10. Affidavit-of-service and the receipt of notice of mentioning filed today be kept on record.

11. It is clear from the documents annexed to the writ petition and handed over in court that it is the incumbent duty of the State Nodal Agencies to take necessary steps for intimation of dues to the respondent no.4 for the purpose of disbursal of the dues of the contractors on account of payment of GST. However, nothing has yet been done on such account.

12. Accordingly, WPA No. 19635 of 2023 is disposed of by directing the respondent no.1 to immediately take steps in terms of the order dated June 06, 2018 of the NRIDA, read in conjunction with the order dated November 20, 2018 issued by the respondent no.1 itself, in implementation of the communication dated December 23, 2019 (Annexure P/5 at page-122 of the writ petition). The necessary intimation, also mentioning the dues payable to the contractors on account of GST, pursuant to the said Notification shall be sent by the respondent no.1 to the respondent no.4 within one month from date.

13. Immediately thereafter, the respondent no.4 shall disburse the necessary amounts for the purpose of distribution to the contractors including the petitioner on account of payments already been made by the petitioner and the other contractors in terms of the work orders issued to them, read with the order dated June 06, 2018 issued by the respondent no.4.

14. The respondent no.4 shall disburse such amount within one month from the date of intimation as per the above direction by the respondent no.1 regarding such dues. Upon such payment, the dues of the contractors shall be cleared off by the State Nodal authorities at the earliest thereafter.

15. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)