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W.P. Nos.4719, 4727 and 4735 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.4719, 4727 and 4735 of 2021
and W.M.P. Nos.5336, 5347 and 5343 of 2021

M/s.Sree Venkateswara Road
Constructions Pvt. Ltd.,
Rep. by Shri.Venkatesan Vedhachalam ... Petitioner in all writ petitions

Vs.

1.The Superintending Engineer,
Bus Route Roads Department,
Corporation of Chennai,
Chennai-600 003.

2.The Additional Director General
Directorate of GST Intelligence,
Chennai Zonal Unit, 5th Floor, Tower-II,
BSNL Building, No.16, Greams Road,
Chennai-600 006. ... Respondents in W.P.No.4719 of 2021

1.The Superintending Engineer,
Storm Water Drain Department,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003.

2.The Additional Director General
Directorate of GST Intelligence,
Chennai Zonal Unit, 5th Floor, Tower-II,



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BSNL Building, No.16, Greams Road,
Chennai-600 006. ...Respondents in W.P.No.4727 of 2021

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1.1.The Superintending Engineer,
Storm Water Drain Department,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003.

2.The Additional Director General
Directorate of GST Intelligence,
Chennai Zonal Unit, 5th Floor, Tower-II,
BSNL Building, No.16, Greams Road,
Chennai-600 006. ...Respondents in W.P.No.4735 of 2021

PRAYER in W.P.No.4719 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st Respondent to consider the representation of the petitioner dated 24.11.2020 and also direct the 1st Respondent to reimburse GST payable by the petitioner for improvement of roads in Zone-9, Dn-109, 118, 119 & 123 (Package-13) and Zone-10, Dn-127, 129, 131 to 135 (Package 11) awarded by the 1st Respondent, along with applicable interest at 18% p.a. under Section 50 of CGST Act 2017 to the petitioner.

PRAYER in W.P.No.4727 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st Respondent to consider the representation of the petitioner dated 24.11.2020 and also direct the 1st Respondent to reimburse GST payable by the petitioner for the construction of Integrated Storm Water Drain in Padikuppam water shed of Cooum Basin (Package-18) awarded by the 1st Respondent, along with applicable interest at 18 % p.a. under Section 50 of CGST Act 2017 to the petitioner.

PRAYER in W.P.No.4735 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st Respondent to consider the representation of the petitioner dated 24.11.2020 and also direct the 1st Respondent to reimburse GST payable by



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the petitioner for the construction of Integrated Storm Water Drain in Manapakkam water shed of Adyar Basin (Packages-34) awarded by the 1st Respondent, along with applicable interest at 18 % p.a. under Section 50 of CGST Act 2017 to the petitioner.

For Petitioner : Mr.G.Natarajan
in all W.Ps.

For Respondents : M/s.P.T.Ramadevi
in all W.Ps. Standing Counsel (for R1)
Mr.V.Sundareswaran
Senior Panel Counsel (for R2)

COMMON ORDER

This batch of writ petitions is filed directing the first Respondent to consider the representation of the Petitioner dated 24.11.2020 and also direct the first respondent to reimburse GST payable by the Petitioner for improvement of roads in Zone-9, Dn-109, 118, 119 and 123 (Package -13) and Zone -10, Dn -127, 129, 131 to 135 (Package 11), for the construction of Integrated Storm Water Drain in Padikuppam water shed of Cooum Basin (Package-18) and for the construction of Integrated Storm Water Drain in Manapakkam water shed of Adyar Basin (Package-34) awarded by the first respondent, along with applicable interest @ 18 percentage p.a. under Sec 50 of CGST Act 2017 to the Petitioner.



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2. The Petitioner is engaged in construction activities including Government projects/contracts. The Petitioner participated in a competitive bid issued by the first Respondent for the improvement of roads in Zone -9, Dn - 109,118,119 & 123 (Package-13) and Zone- 10, Dn -127,129,131 to 135 (Package-11) in Chennai. The Respondent accepted the Petitioner's bid through Letters of Acceptance bearing no. B.R.R.C.No.B2/171/13/2016 dated 29.02.2010 and B.R.R.C.No.B1/4205/2015 for the improvement of roads in Zone-9 (Package 13) and Zone-10 (Package 11) respectively.

3. The above said work was awarded to the Petitioner during the erstwhile Service Tax regime i.e. prior to 01.07.2017. Further, it was submitted by the petitioner that during erstwhile regime of the Service Tax, they were not discharging their Service Tax liability on the above work as the petitioner was exempted vide Serial No.13 (a) of Service tax Notification No. 25/2012 S.T dated 20.06.2012. Therefore, the price was quoted by the Petitioner for the subject work without taking into account any liability towards Service Tax.



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4. It was submitted by the petitioner that subsequent to the introduction of the Goods and Services Tax Act, with effect from 01.07.2017, number of exemptions extended under Service Tax regime were discontinued. GST was imposed on the subject services by way of Notification No.11/2017 Central Tax (Rate) Dated 28.06.2017. Serial No.3 of the said notification along with corresponding SGST Notification imposed a total of 18% GST (9% CGST + 9% SGST) for construction services in general. The services provided by the Petitioner attracted 18% GST. Subsequent thereto, on 22-08-2017, an amendment to Serial 3 of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 was made vide Notification No. 20/2017 Central Tax (Rate) dated 22.08.2017, as a result, the rate of tax on subject works contract was reduced to 12% GST (6% CGST + 6% SGST). Due to lack of awareness and based on the bonafide belief that the subject works continues to be exempted under GST, the Petitioner neither charged any GST from the first respondent nor paid GST to the Government.



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5. The Directorate General of Goods and Service Tax Intelligence,

Chennai Zonal Unit, the second respondent herein verified the records of the Petitioner and observed that the Petitioner had not paid appropriate GST for the works executed / undertaken by them for the first respondent. During the course of the investigation, it was informed that an amount of Rs.12,13,229.76/- and Rs.21,68,387.34/- for Zone-9 and Zone- 10 respectively is to be remitted towards the petitioner's GST liability.

6. It was further submitted that since GST is an indirect tax, the liability of which shall be borne by the first Respondent, being the service recipient, the Petitioner vide letter dated 24.11.2020 requested the first Respondent to reimburse the GST along with interest. It was submitted by the petitioner that the first Respondent has neither reimbursed GST component nor replied to the said letter till date. The petitioner is faced with threat of recovery by the second respondent of the GST liability in respect of the subject works contracts undertaken by the Petitioner for the first respondent.



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7. It is in these circumstances, the petitioner had filed the present writ petitions to direct the first Respondent to consider the representation of the Petitioner dated 24.11.2020 and also direct the first respondent to reimburse GST payable by the Petitioner for improvement of roads in Zone-9, Dn-109, 118, 119 and 123 (Package -13) and Zone -10, Dn -127, 129, 131 to 135 (Package 11), for the construction of Integrated Storm Water Drain in Padikuppam water shed of Cooum Basin (Package-18) and for the construction of Integrated Storm Water Drain in Manapakkam water shed of Adyar Basin (Package-34) awarded by the first respondent, along with applicable interest @ 18 percentage p.a. under Sec 50 of CGST Act 2017 to the Petitioner.

8. It is submitted by both the learned counsel for the petitioner and the respondent that similar writ petitions in W.P.Nos.21196 and 21198 of 2019 dated 01.08.2019 and W.P.(MD) No.25882 of 2022 dated 16.11.2022, was disposed of by this Court with the following observations/directions;

“ ...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



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(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 15.09.2017 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*



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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.”

9. In these circumstances, 1st respondent is directed to consider the representation of the petitioner dated 24.11.2020, on its own merits and pass appropriate orders in accordance with law, including the relevant Government orders after granting the petitioner reasonable opportunity



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within a period of four (4) weeks from the date of receipt of a copy of this order. The Writ Petitions stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order/ Non speaking order
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To:

- 1.The Superintending Engineer,
Bus Route Roads Department,
Corporation of Chennai,
Chennai-600 003.
- 2.The Superintending Engineer,
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MOHAMMED SHAFFIQ, J.

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