IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.13017 & 13021 of 2023

Subaya Constructions Company Ltd.,
Rep. by its Director S.Meenakshi,
New No.21 (Old No.26), Soundarapandian Street,
Ashok Nagar, Chennai-600 083. ...Petitioner in both W.Ps.

Vs.

1. Tamil Nadu Water Supply and Drainage Board,
   Rep. by its Chief Engineer,
   TWAD Board, Vellore - 632 006.

2. Tamil Nadu Water Supply and Drainage Board,
   Rep. by its Executive Engineer,
   TWAD Board, RWS Division,
   Ranipet - 632 401. ...Respondents in W.P.No.13017 of 2023

Vs.

1. Tamil Nadu Water Supply and Drainage Board,
   Rep. by its Chief Engineer,
   TWAD Board, No.30, Bharthi Park Road,
   Siruvani Nagar, Coimbatore - 641 043.

2. Tamil Nadu Water Supply and Drainage Board,
   Rep. by its Executive Engineer,
   TWAD Board, Sewerage Division,

15, ASD Puram, Mahalingapuram P.O,
Pollachi - 642 002. ...Respondents in W.P.No.13021 of 2023

Prayer in W.P.No.13017 of 2023: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to calculate and remit the GST component to the petitioner for the works related to the contract for "Providing UGSS to Arakkonam Municipality, Vellore District bearing No.CE/VLR.R.No.14/2014-15 dated 20.02.2015" in terms of Clause 10a of G.O.Ms.No.296 dated 09.10.2017 and in tune with Judgement of this Hon'ble High Court in W.P(Mdu).No.15967 of 2020 dated 08.03.2021 and W.P.Nos.21196 & 21198 of 2019 dated 01.08.2019 within a time frame as fixed by this Hon'ble Court.

Prayer in W.P.No.13021 of 2023: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to calculate and remit the GST component to the petitioner for the works related to the contract for "Providing UGSS to Pollachi Municipality, Coimbatore District" including maintenance of the scheme for 5 years dated 30.09.2016 bearing No.46 CE/CBE/11/2016-2017" in terms of Clause 10a of G.O.Ms.No.296 dated 09.10.2017 and in tune with Judgement of this Hon'ble High Court in W.P(Mdu).No.15967 of 2020 dated 08.03.2021 and W.P.Nos.21196 & 21198 of 2019 dated 01.08.2019 within a time frame as fixed by this Hon'ble Court.

In Both W.Ps.:

For Petitioner : Mr.P.J.Rishikesh

For Respondents : Ms.S.Mekhala

COMMON ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. Ms.S.Mekhala, learned counsel takes notice for the respondents. In view of the consent expressed by the Learned counsel appearing on either side, these petitions are taken up for final disposal.

3. The case of the petitioner the petitioner / company is a Class I Contractor and has been executing several contracts with the Public Works Department. The petitioner/company entered into two different contracts with the 1st respondent for "*Providing UGSS to Arakkonam Municipality, Vellore District*" and for *"Providing UGSS to Pollachi Municipality, Coimbatore District, including maintenance of the scheme for 5 years"* respectively. Since the said contracts were entered into prior to introduction of GST, there was no provision for payment of GST. Though the 1st respondent claimed orally that, they released GST along with the bills, there was no clarity of how the said GST component was worked out. Further, the respondent/TWAD board prepared supplemental agreements pertaining to GST and the petitioner/company signed the same under Economic duress, and the petitioner/company was not permitted to record their objections.

Thereby, the petitioner/company recorded their objection to the execution of the respective supplemental agreements, vide their letters dated 21.05.2018 and 17.10.2018 respectively. As the 1st respondent had not released the GST component, the petitioner/company made delayed payments of remittance of GST to the GST Department. In this regard, the petitioner/company placed reliance on the order of this Court dated 01.08.2019 made in W.P.No.21196 & 21198 of 2019 wherein in similar cases, this Court has held that, "it is only Para 10(a) of G.O.Ms.No.296 dated 09.10.2017 that would apply to the present nature of the contract and directed the employers therein to compute the GST component in terms of Para 10(a), quantify the same". Further, the said decision was also followed by this Court in W.P.MD.No.15967 of 2020 dated 08.03.2021, in which this Court held that, "only Clause 10a of the G.O.Ms.No.296 dated 09.10.2017 would apply and directed the Employer to calculate the GST component and remit the payments". Thereafter, the petitioner/company gave several representations and last representation/letter was submitted on 09.01.2023 before the 2nd respondent, seeking payment of GST component in terms of the above said G.O.Ms.No.296, however, till date, no orders have been passed on the said representations. Hence, these Writ petitions.

4. Though very many grounds have been raised, learned counsel for the petitioners submitted that, it would suffice, if this Court issues direction to the respondents to consider the petitioner/company's respective representation dated 09.01.2023 and to consequently calculate and remit the GST component to the petitioner/company for their works related to the respective contracts in terms of Clause 10a of G.O.Ms.No.296 dated 09.10.2017 and in the light of the orders passed by this Court in W.P(MD).No.15967 of 2020 dated 08.03.2021 and W.P.Nos.21196 & 21198 of 2019 dated 01.08.2019.

5. On the above said contentions heard learned counsel appearing for the respondents and perused the materials placed on record.

6. In view of the above submissions, this Court, without expressing any opinion on the merits of the case, directs the respondents to consider the petitioner/company's respective representations/letter dated 09.01.2023 in the light of the orders passed by this Court in W.P(MD).No.15967 of 2020 dated 08.03.2021 and W.P.Nos.21196 & 21198 of 2019 dated 01.08.2019

and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner and aggrieved persons, if any

7. With the above observations and directions, these Writ petitions stand disposed of. No costs.

27.04.2023

skt

NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

1. Tamil Nadu Water Supply and Drainage Board,
Rep. by its Chief Engineer,
TWAD Board, Vellore - 632 006.

2. Tamil Nadu Water Supply and Drainage Board,
Rep. by its Executive Engineer,
TWAD Board, RWS Division,
Ranipet - 632 401.

3. Tamil Nadu Water Supply and Drainage Board,
   Rep. by its Chief Engineer,
   TWAD Board, No.30, Bharthi Park Road,
   Siruvani Nagar, Coimbatore - 641 043.

4. Tamil Nadu Water Supply and Drainage Board,
   Rep. by its Executive Engineer,
   TWAD Board, Sewerage Division,
   15, ASD Puram, Mahalingapuram P.O,
   Pollachi - 642 002.

M.DHANDAPANI., J.

skt

W.P.Nos.13017 & 13021 of 2023

27.04.2023