IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.21533 of 2023

KCP Engineers Pvt Ltd,
(Now Known as KCP Infra Ltd),
No.4, Ground Floor, Alayam Space,
Ananda Road, Alwarpet,
Chennai – 600 018,
Rep by its Director,
K.Muthukumarasamy. ... Petitioner

Vs

1.The State of Tamil Nadu,
Rep by its Principal Secretary,
Highways and Minor Ports Department,
Fort St.George, Secretariat,
Chennai – 600 009.

2.The Chief Engineer (H), C&M,
Chennai.

3.The Superintending Engieer (H),
Construction and Maintenance,
Highways Department,
Trichy – 620 020.

4.The Superintending Engineer (H),
Construction and Maintenance,
Highways Department,
Trichy Road, Coimbatore – 641 018.

5.The Divisional Engineer (H),
Construction and Maintenance,
Highways Department,
Gobichettipalayam. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to consider and pass orders on the representation of the petitioner dated 22.07.2022, 23.09.2022 and 05.01.2023 by implementing the GST rate 18% instead of 12% with effect from 18.07.2022 for ongoing all the works as per the recommendation by the GST council dated 28th and 29th June 2022 and issue proper clarification sought for in the Lr.No.468/A2/2022 dated14.10.2022on the file of the 5th respondent.

For Petitioner : Mr.S.Doraiswamy

For Respondents : Mr.M.Rajendran
Additional Government Pleader

ORDER

Mr.M.Rajendran, the learned Additional Government Pleader takes notice on behalf of the respondents.

2.After hearing the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents, this writ petition is being disposed at the time of admission, as no adverse orders are proposed to be passed at the stage.

3.Earlier, the petitioner had also approached this Court in W.P.No.27865 of 2022 vide its order dated 18.10.2022 which was dismissed as withdrawn with the following observations:

> "*2.In light of the endorsement made, this writ petition is dismissed as withdrawn. Liberty is granted to the petitioner to purse the matter before the respondents. In fact, learned counsel for the petitioner draws attention of the State vide letter dated 14.10.2022 and thus it would be appropriate that the matter be pursued before the authorities. No costs.*"

4.The petitioner appears to be a contractor of the Respondent/State Highways Department, who was awarded the contract. At the time, when the contract was signed with the respondent, the GST rate in force fixed by the Government was 12%. It appears that the rate of GST was enhanced to 18% with effect from 18.07.2022. The Government has however not acted upon pursuant to the changes in the rate of GST. Hence, the petitioner has sent several representations to the respondents.

5.By a communication dated 14.10.2022 bearing reference Lr.No.468/A2/2022, the Divisional Engineer, Highways Department has informed the petitioner that the Chief Engineer (H), Construction and Maintenance, Chennai/second respondent herein had filed a communication dated 12.10.2022 bearing reference No.ACCOUNTS.II/MGL.II/94/2022, as requested the Government for making payment to the contractors by incurring additional expenditure on account of increase in GST for the works executed on or after 18.07.2022 through budget allotment. Till date, the Governmenet has not acted upon the same.

6.The case of the petitioner apepars to be genuine, as the petitioner cannot be mulct with higher rate of tax for the work/supply of work to the respondent/Department, GST being an indirect tax, the incidence of tax has to be borne by the recipient.

7.Considering the above, there shall be a direction to the first respondent to pass appropriate orders for making suitable budget allocation for reimbursing the petitioner and other contractors the GST for the difference in GST rate on account of increase in the rate. The differential amount of GST on account of increase rate of tax with effect from 18.07.2022 shall be paid. This exercie shall be carried out by the respondents particularly the first respondent within a period of 45 days from the date of receipt of a copy of this order. In case, the respondents fail to pay the amount within such time, the petitioner shall be entitled to file a suit for recovery of the amount of GST.

8.This writ petition stands allowed in terms of the above observations. No costs.

20.07.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To

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C.SARAVANAN,J.

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