IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

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THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.No.34766 of 2022

KCP Engineers Pvt. Ltd.,
No.4, Ground Floor,
Alayam Space, Ananda Road, Alwarpet,
Chennai-600 018.
Rep. by its Director
K.Muthukumarasamy

... Petitioner

-Vs.-

The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
4th Floor, Kamarajar Salai,
Chepauk, Chennai-600 005.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to pass orders on the representation of the petitioner dated 28.12.2021 & 05.08.2021 by implementing the notifications issued by the Government of India, Ministry of Finance (Department of Revenue) issued vide Notifications in Nos.15 & 16 of 2021-Central Tax (Rate) dated 18.11.2021 and revised the rates of GST for Government Sector viz., the respondent herein with effect from 01.01.2022 as 18% instead of 12% as in the case of CMWSS Board (Fin (Tax Wing) Dept) have followed and issued a circular dated 08.12.2021.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.S.Ravikumar
Special Government Pleader

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ORDER

Captioned writ petition turns on a very narrow compass.

2. Suffice to say that the writ petitioner is a registered Class-I contractor qua 'Tamil Nadu Water Supply and Drainage Board' [hereinafter 'TWAD Board' for the sake of convenience]. Mr.S.Doraisamy, learned counsel for writ petitioner who is before this Court along with Mr.V.Elangovan submits that writ petitioner has done work for TWAD Board and rate changes (services) applicable to the respondent is 18% [not 12%] and writ petitioner will be able to pay 6% difference only on the respondent paying back the same. It may not be necessary to dilate on facts any further. It is also necessary to make it clear that this Writ Court does not express any view or opinion on the contentions of the writ petitioner owing to learned counsel for writ petitioner submitting that he restricts/abridges the prayer to disposal of writ petitioner's representation dated 05.08.2022 [wrongly mentioned as 05.08.2021 in the prayer].

3. To be noted, the representation sent by writ petitioner to the respondent together with postal acknowledgment card are at pages 45 to 47 of typed set of papers and a scanned reproduction of the same is as follows:

KCP INFRA LIMITED

Dt: 05.08.2022

To

The Managing Director,
TWAD Board,
31, Kamarajar Salai,
Chepauk,
Chennai-600 005.

Dear Sir,

Sub : Intimation of Change in GST rate – Reg.

Ref : 1. Augmentation of water supply by regrouping in combined water supply improvement scheme to 249 Rural Habitations in Annur, Avinashi and Sulur unions of Coimbatore and Tirupur Districts (Package – II). Work Order No. 705 RH PACKAGE-2/SDO(1)/CE/CBE/2020 dt.01.10.2020.

2. Providing CWSS to Thittakudi, Pennadam, Mangalampettai, Vadalur, Kurinjipadi and Gangaikondan, Town Panchayats and 625 rural habitations in Mangalore, Nallur and Virudhachalam, Unions of Cuddalore District with NLC Mine Water as source. Period of Completion – 18 Months, Trial run – 3 Months and paid maintenance of the scheme – 60 Months – Package III. Work order no. Letter No:F,NLC-P3/DO/CE/VLR/2020/ dt.04.11.2020

3. Providing Combined Water Supply Scheme to Ilampillai, Attayampatti, Panamarathupatti, Mallur and Edanganasalai Town Panchayats, 775 Rural habitations in Veerapandy, Panamarathupatti and Salem Unions in Salem District – Package-4.(Construction period : 18 months, Trial Run : 6 months and Paid Maintenance : 60 months) Package 4. Work order no. Letter No:F.CWSS to Ilampillai Package-4/DO(TS)/ CE/ CBE/ 2020/ Dated 19.01.2021

4. Providing Combined Water Supply Scheme to 8 Town Panchayats, 2452 Rural habitations with Bulk provision to 3 Municipalities in Sivagangai District with river Cauvery as source including maintenance for a period of 5 years – TRANSMISSION MAIN-II & GRAVITY MAIN-I, MST(Receiving Sump) @ THENAMAMALPATTI & allied Works and All works in Sivaganga and Singampunari Unions–(Period of completion – 30 months) – Package – II.Work order no. Letter No:F.Sivagangai CWS – Pack II/DO II / CW /2021-1/ dt.01.02.2021

5. Providing WSIS to Thiruthani Municipality in Thiruvallur District with river Palar as source at Athipattu Village. Execution period – 18 months. Trial run period – 6 months and maintenance of the scheme – 12 months. Work order no. Letter No:F.WSIS to Thiruthani Municipality/DO/CE/VLR/ 2020/ Dt:10.06.2020

This is with reference to the above cited subject and references; we have been awarded the above mentioned works in TWAD Board and they are progressing as per schedule.

KCP Infra Limited
(Formerly known as "KCP Engineers Ltd")

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KCP
INFRA LIMITED

The aforesaid supply of services falls under the category "construction services" a currently attracts 12% GST (6% CGST and 6% SGST) vide Sl.No.3 (vi) of the Notification No. 11/2017-CT (Rate) dated 28.06.2017 (corresponding State Notification in Go (Ms) No. 72 dated 29.06.2017).

2.0 In this regard, we wish to bring to your attention the Notification No. 15/2021- Central Tax (Rate) dated 18-11-2021 wherein the benefit of reduced rate of GST available to Government Authorities and Government Entities for the specified services has been withdrawn by omitting the words "a Governmental Authority or a Government Entity" in the Sl.No. 3 of 11/2017-CT (Rate) dated 29.06.2017.

3.0 It is further pointed out that The Tamil Nadu Water Supply and Drainage Board (TWAD Board) is a statutory body corporate constituted under TWAD Board Act, 1970.

4.0 We further wish to draw your attention to the definition of Government Entity under Explanation (x) of the Notification No. 11/2017-CT (Rate) dated 28.06.2017.

(x) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

i) set up by an Act of Parliament or State Legislature; or

ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

A perusal of the above definition makes it abundantly clear that the Tamil Nadu Water Supply and Drainage Board (TWAD Board) falls under the category of "Government Entity". Therefore, by virtue of the aforesaid change, our supply to you attracts the rate of 18% GST (9% CGST and 9% SGST) under Sl.No.3(xii) of the Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended by Notification No. 15/2021- Central Tax (Rate) dated 18-11-2021. This change is effective from 01.01.2022.

5.0 In view of the above, it is intimated that, with effect from 01.01.2022, you will be liable to pay GST at 18% for the supply made by us vide the aforesaid Agreement which deals with reimbursement of GST to the contractor/supplier.

6.0. It is requested that the aforesaid rate change may kindly be taken note of.

Yours Sincerely,

For KCP Infra Limited

Authorised Signatory

KCP Infra Limited
(Formerly known as "KCP Engineers Ltd")
Admin. Office: No. 7A-7th Floor, ... Coimbatore, TN - ...
Reg. Office: No. 4, Ground Floor, ... Alwarpet, Chennai, TN - ...

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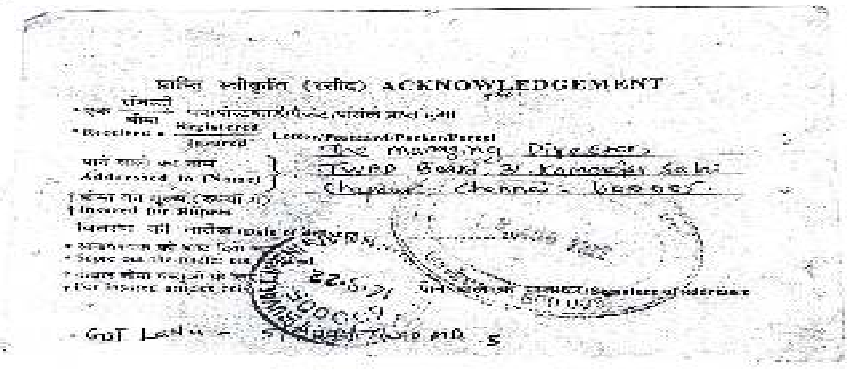

4. Mr.S.Ravikumar, learned Special Government Pleader accepts notice on behalf of lone respondent. Learned Special Government Pleader submits that notwithstanding abridged prayer the representation has to necessarily be considered on its own merits and in accordance with law. There is no difficulty in accepting this submission and as delineated supra, this Writ Court has already made it clear that no view or opinion on the merits of the matter has been expressed in this order.

5. In the light of the narrative thus far, captioned writ petition is disposed of with a directive to the respondent to consider the aforementioned representation of the writ petitioner dated 05.08.2022 on its own merits, in accordance with law and dispose of the same as expeditiously as the business of

the respondent would permit and in any event within four weeks from today i.e., on or before 30.01.2023. The proceedings disposing of the representation of writ petitioner i.e., proceedings of the respondent shall be communicated to the writ petitioner under due acknowledgment within seven working days from the date of disposal.

6. Captioned writ petition disposed of in aforesaid manner. There shall be no order as to costs.

02.01.2023

kmi

To
The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
4th Floor, Kamarajar Salai,
Chepauk, Chennai-600 005.

M.SUNDAR, J

kmi

W.P.No.34766 of 2022

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