BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

C O R A M

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.3633 of 2021

M/s.T.S.Tourdhsamy & Sons,
Represented by its Proprietor,
Mr.Peter,
No.31/2, Ramalinga Nagar Main Road,
Vasantha Nagar, Madurai - 625 003. ... Petitioner

-vs-

1.Public Works Department,
Represented by its Executive Engineer,
Saruganiyar Basin Division,
Sivagangai - 630 561.

2.Public Works Department,
Represented by its Superintending Engineer,
Lower Vaigai Basin Circle,
Sivagangai - 630 561.

3.Public Works Department,
Represented by its Chief Engineer,
Water Resource Organization,
Water Region,
Madurai - 625 002.

4.The Principal Secretary to the Government,
Public Works Department,
Namakkal Kavingar Maligai,
Fort St. George, Chennai - 600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to letter dated 27.10.2020, issued by 1st respondent in Letter 93/885/2020, dated 27.10.2020, quash the same and further direct the respondents to consider for the reimbursement of Goods and Service Tax, based on the methodologies provided under Clause 10 of G.O.Ms.No.296 of 2017, dated 09.10.2017 issued by Finance (Salaries) Department, Government of Tamil Nadu.

For Petitioner	:	Mr.Anirudh Krishnan
For Respondents	:	Mr.Veera.Kathiravan Additional Advocate General Assisted by Mr.B.Saravanan Additional Government Pleader

ORDER

When the Writ Petition came up for hearing on 08.12.2023, this Court passed the following order:-

"This Writ Petition was filed challenging the impugned letter, dated 27.10.2020 issued by the first respondent and for a direction to the respondents to consider the representation made by the petitioner on 20.10.2020 wherein, the petitioner has sought for reimbursement of the Goods and Service Tax (GST) based on the methodologies provided in G.O(Ms)No.296 of 2017 dated 09.10.2017.

2. The brief facts of the case is that the Public Works Department wanted to construct a check dam across Vaigai River near Tiruppuvanam Town Panchayat. Accordingly, a tender was floated on 12.04.2017 and the petitioner participated in the tender process. The bid that was submitted by the petitioner was accepted and approved by the Tender Award Committee vide meeting held on 21.07.2017. The same was also sanctioned and the respondent proceeded to issue the Forwarding Slip which is in the nature of Work Order, dated 24.08.2017 and the total costs was fixed at Rs.9,62,14,330/- (Rupees Nine Crore Sixty Two Lakh Fourteen Thousand Three Hundred and Thirty only).

3. The further case of the petitioner is that an agreement dated 24.08.2017 was also entered into between the parties for the execution of the work. The GST was introduced into indirect tax regime with effect from 01.07.2017. Thereby, the earlier indirect taxes like Sales Tax, Service Tax etc., were subsumed by GST. While the agreement was entered into between the petitioner and the respondents on 24.08.2017, the same did not contemplate the effect of GST and both the parties were having the earlier tax regime in their mind. By virtue of G.O.(Ms)No.264, dated 15.09.2017, the concerns that were raised with respect to change in the tax regime was considered. Thereafter, the second Government Order was passed in G.O.(Ms)No.296 dated 09.10.2017 which gave detailed guidelines for evaluating the net change in tax liability for the purpose of payment to be made to the contractors. This Government

Order was more in the nature of continuation of the first Government order.

4. The learned counsel for the petitioner submitted that the short issue that arises for consideration in the present Writ Petition is as to whether the petitioner will be entitled to take advantage of both the above Government Orders and seek for reimbursement of the GST that was paid by the petitioners, on the ground that GST was not within the understanding of both the parties when they entered into an agreement on 24.08.2017.

5. The learned Additional Government Pleader appearing on behalf of the respondents submitted that the learned Additional Advocate General is leading him in this matter.

6. Considering the limited issue involved in this Writ Petition, post this Writ Petition under the caption "Part Heard Cases" on 15.12.2023 at 2.15 p.m."

2. When the matter was taken up for hearing today, the learned Additional Advocate General appearing on behalf of the respondents submitted that the respondents require more particulars and documents from the petitioner in order to consider the reimbursement of GST that is claimed by the petitioner. The learned Additional Advocate General submitted that if such a representation is made to the third respondent along with all the returns that were filed under GST, it will be dealt with by the third respondent in line with the Government Orders.

3. In reply to the above submission, the learned counsel appearing on behalf of the petitioner submitted that there will be no difficulty for the petitioner to furnish the GST returns that were made. It is further contended that the respondents have included under the head "Subsumed Tax Amount" a sum of Rs.82,75,323/-. The learned counsel submitted that since this is the works contract, the service tax will be zero and therefore, no excise duty will also arise in this case. The learned counsel submitted that the materials were purchased from the second sale supplier with no ED bills and so, the central excise duty was added to the cost of the material in arriving at the quoted prices and excluded from the components of the taxes. He further contended that the service tax has been exempted for this project before the GST regime by the Government of India. Hence, this tax also should not be considered in estimating the subsumed taxes. The learned counsel submitted that these factors must also taken into account by the third respondent while considering the representation made by the petitioner.

4. Taking into consideration the facts and circumstances and the submissions made by the learned counsel on either side, this Court deems it fit to dispose of this Writ Petition with the following directions:-

(a) The petitioner is directed to make a fresh representation before the third respondent within a period of four weeks from the date of receipt of a copy of this order, seeking for the reimbursement of the GST amount that was paid by the petitioner. While submitting the representation, the petitioner shall also submit all the relevant returns that were filed under the GST regime to support the claim for reimbursement;

(b) the third respondent on receipt of the representation shall deal with the representation in line with G.O.(Ms)No.264, dated 15.09.2017 and G.O.(Ms)No.296, dated 09.10.2017. This direction is given since the very basis of considering the representation made by the petitioner will be based only on these two Government Orders;

(c) the petitioner had given a detailed representation, dated 20.10.2020, to the Executive Engineer of Public Works Department. In that representation, the petitioner has raised a specific plea regarding what should not be included under the head "Subsumed Tax Amount". This shall also be specifically dealt with by the third respondent while dealing with the representation made by the petitioner. For that purpose, the petitioner shall also annex the representation, dated 20.10.2020 along with the fresh representation that is going to be given to the third respondent; and

(d) The third respondent shall take a decision with respect to the reimbursement sought for by the petitioner within a period of 12 weeks from the date of receipt of the fresh representation from the petitioner.

No costs.

21.12.2023

NCC : Yes/No
Index : Yes/No
smn2

To
1.The Executive Engineer,
Public Works Department,
Saruganiyar Basin Division,
Sivagangai - 630 561.

2.The Superintending Engineer,
Public Works Department,
Lower Vaigai Basin Circle,
Sivagangai - 630 561.

3.The Chief Engineer,
Public Works Department,
Water Resource Organization,
Water Region,
Madurai - 625 002.

4.The Principal Secretary to the Government,
Public Works Department,
Namakkal Kavingar Maligai,
Fort St. George, Chennai - 600 009.

N.ANAND VENKATESH, J.

smn2

W.P.(MD)No.3633 of 2021

21.12.2023