IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10122 of 2023

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JMC Construction Private Ltd. having its Corporate Office at 27-972/1, Telecom Colony, Chittoor- 517001, Andhra Pradesh through its authorized Signatory Mr. Venkatesh, Male, Aged 50 years, S/o Late S.S Mahi, R/o Mohalla- 15-946, Vinakapuram, P.S.- Chittor, District- Chittor, State- Andhra Pradesh, 517001.

... ... Petitioner/s

Versus

1. The Union of India through Ministry of Finance, New Delhi- 110001.
2. The Goods and Service Tax Council, Janpath, Connaught Place, New Delhi- 110001.
3. The Principal Commissioner of Central Taxes, Revenue Building, Patna, Bihar.
4. The Commissioner of State Taxes, Patna, Bihar.
5. The Superintendent, Central, GST and CEX- Purnea Range, Quarter No. Type- 11/1 Central Excise Revenue Colony (Near Mata Chowk), Maranga Road, New Sipahi Tola, Purnea- 854301.
6. The Superintendent, Gr- 19, Central GST and Central Excise Audit Circle, Gulam Rasul Campus, Luxmipur, Balbhadrapur, Laheriasarai, Darbhanga, Bihar- 846001.
7. The National Highway Authority of India, Ministry of Road Transport and Highways, G 5 and 6, Sector 10, Dwarka, New Delhi- 110075.
8. The Project Director, PIU, NHAI, Darbhanga, Bihar.
9. The Project Director, PIU, NHAI, Chapra, Bihar.
10. The Project Director, PIU, NHAI, Motihari, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prince Kumar Mishra, Advocate
		Mr.Abhishek Anand, Advocate
		Ms.Kanupriya, Advocate
For the UOI	:	Dr.K.N. Singh, ASG

For the NHAI : Mr.Maurya Vijay Chandra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-08-2024

The question raised in the above writ petition is as to whether the contractor is liable to pay the higher rate under the GST regime when the agreement executed shows the earlier rates.

2. The petitioner is a works contractor who has entered into various contracts with the respondent-National Highways Authority of India (NHAI). Some of the agreements were executed prior to the GST regime; which was implemented on 01.07.2017 and the others, after the said date. Insofar as four contracts as seen from the tabulation in the counter affidavit dated 31.10.2023 of Respondent Nos. 7 to 10, the differential rate as applicable under the Goods and Services Tax regime was paid by the awarder i.e., the NHAI. However with respect to two contracts executed subsequent to 01.07.2017, the awarder/NHAI refused to pay the differential rates under the Goods and Services Tax Act.

3. The tabular form itself indicates that the submission of bid itself was after 01.07.2017 i.e., on 20.11.2017 and 21.11.2017. The agreements of the two contracts were executed on 21.02.2018 and 19.05.2018. In such circumstances, there cannot be any claim for the differential rate to be reimbursed, since at the time of the bid and the execution of the agreement, the rates applicable were as per the Goods and Services Tax Act.

4. The learned Counsel had a further contention that Clause 42 of the agreement permitted service tax to be reimbursed and that the agreements indicated only the taxes as per the earlier enactments. The tax rates as per the earlier enactment is obviously a mistake since the Goods and Services Tax Act had come into effect from 01.07.2017. As far as Clause 42.1 is concerned, it specifies that the rate quoted by the contractor would be deemed to be inclusive of all taxes, except services tax of Central and State Government. If the services tax leviable is exempted insofar as works carried out for the State and Central Government, necessarily the exemption would be applicable to the petitioner. However, insofar as the other taxes and levies, specifically on the goods employed in the works contract; there can be no such exemption. The rates quoted include the taxes and hence only the balance amounts after

deduction of tax at source would be payable to the petitioner.

5. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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CAV DATE	
Uploading Date	
Transmission Date	