08.07.2024
Sl. No.10(DL)
srm

W.P.A. No. 13825 of 2024

M/s. S.S. Enterprises

Versus

West Bengal State Rural Development Agency & Ors.

Mr. Debasish Ghosh,
Mr. Sishir Kumar Raut

…for the Petitioner.

Mr. Somnath Ganguli,
Mr. B. Sen

…for the State-respondents.

Affidavit-of-service is taken on record.

The petitioner claims to have worked in different projects under the Pradhan Mantri Gram Sadak Yojona. Such work was on the basis of tender floated by the respondent No.1, i.e. the West Bengal State Rural Development Agency.

According to the petitioner, the work was completed. Thereafter, GST regime intervened and there was an escalation of the tax component payable by the contractor. As per the works contract on the basis of which the petitioner had completed its work, 5% VAT was required to be paid. As the works spilled over to the GST regime, tax component (GST) was 12% in 2017 and 18% in 2023. Thus, the petitioner contends to have spent more, but the rate quoted during the bid did not cover the additional tax component.

The petitioner contends that the escalated tax component (GST) was paid by the petitioner, but when the petitioner had entered into the contract such escalation was neither a part of the contract nor was it expected, predicted or provided for. Hence the differential amount which the petitioner had paid towards GST, should be reimbursed by the tendering authority.

The petitioner relies on a notification dated June 6, 2018 issued by the National Rural Infrastructure Development Agency as also a notification issued by the Joint Chief Executive Officer, WBSRDA. Both these notifications provide that the contractor should submit the claim and such claim would be decided by the competent authority.

It is now submitted that the government held a meeting with some of the stakeholders sometime in June, 2023, and it was resolved that the claim of contractors would be processed within a period of six months.

The petitioner is aggrieved as its claim for the differential amount of tax paid as GST, had not been processed.

Learned advocate appearing on behalf of the State respondents submits that the State authorities consider such escalation as a risk factor which every contract provides for. The change in the taxation law, by promulgation of the Goods and Services Tax Act was such a risk.

In my opinion, these issues are to be decided by the appropriate authority. Thus, the writ petition is disposed of directing the Executive Engineer, West Bengal State Rural Development Agency, Malda Division, to treat the writ petition as a representation and dispose of the same in accordance with law. The petitioner had already approached the said authority by filing representations.

The authorized representative of the petitioner will be heard and a reasoned order shall be passed and communicated to the petitioner within a period of four months from the date of communication of this order.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)