03.10.2024
Sl. No. 33.
D/L.
Mithun
Ct.No.03.

WPA 13272 of 2023

Sreema Construction
Vs.
The State of West Bengal & Ors.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar,
Mr. Ajeyo Chowdhury,
...for the petitioner.
Mr. Susanta Pal,
Ms. Susnita Saha
...for the State respondents.

In the present writ petition, the petitioner is seeking direction against the Respondent No.3 for the reimbursement of the additional amount paid by them towards the Goods & Service tax amounting to Rs. 6,39,430.82/-.

Learned counsel for the petitioner submits that the petitioner is a proprietorship firm carrying on business in the realm of constructional activities undertaken by the Government of West Bengal, Government of India and other government undertaking organizations. The respondent No. 3 floated a Notice Inviting E- Tender being No. e-NIT/WBPWD/SEWC-II/NIT30/2nd Call/2016-2017 of Superintending Engineer, Western Circle No-II, Public Works (Roads) Directorate for the construction of

5Mx5M, 2 span box bridges at 19th k.m. of the Champadanga – Pursurah – Arambagh road in replacement of narrow bridge under Hooghly Construction Division, Public Works Department during the year 2016-17. The petitioner further contended that he participated in the said Notice Inviting E-Tender process and quoted rate @ 7.02% less than the estimated amount put to tender. Having been qualified in the technical bid, the rate quoted by the petitioner was duly considered and found to be lowest. Considering the lowest rate in the process of comparative bidding, a work order being memo no. 283 dated February 16, 2017 was issued in favour of the petitioner instructing him to commence the work on and from February 17, 2017. According to the work order the scheduled date of completion was June 16, 2017 and tendered amount was Rs. 1,33,53,914/-. Consequently, a contract was executed between the State of West Bengal and the petitioner. Pursuant to the said instruction as mentioned in the work order, the execution of the subject work commenced on February 17, 2017 and without there being any interruption, the said subject project has been completed satisfactorily on September 21, 2017. The payment has been made on the basis of the executed quantity of the work. The Goods and Service Tax Act, 2017 was implemented with effect from July 01, 2017. At the time of floating the Notice Inviting Tender or at the time of commencement of the subject project, the existence of the Goods and Service Tax Act, 2017 was not there and the petitioner quoted the rate considering the statutory changes, taxes prevailing at the relevant point of time. The petitioner further contended that the gross bill value as per the payment certificate issued by the appropriate authority for the subject project was of Rs. 82,88,918/-. Taxable value as per Goods and Service tax is of Rs. 74,00,819.64/- (Rs. 82,88,918 x 100/112). After receiving the final bill, the petitioner had to deposit a sum of Rs. 8,88,098.36/- (Rs. 74,00,819.64 x 12/100) on account of Goods and Service Tax. Thereafter, the total deposited amount on account of Goods and Services Tax is a sum of Rs. 6,39,430.82/- [Rs. 8,88,098.36- (Rs. 82,88,918 x 3/100)].

It is the case of the petitioner that the payment has been made on the basis of the executed quantity of the subject work. The petitioner is entitled for the reimbursement of a sum of Rs. 6,39,430.82/- on account of Goods and Service Tax for the said project. The respondent authorities herein are the service recipient and as such they are entitled to bear the charges on account of the Goods and Service Tax. Despite being fully aware of the aforesaid scenario and the intention of the parties at the time of entering the contract, the State of West Bengal is, at present, refused to reimburse the Goods and Service Tax amount which has already been paid by the petitioner. Further the petitioner states that for settlement of the said dispute, the petitioner filed an application dated July 8, 2022 before the State Legal Services Authority, West Bengal seeking to reimburse the Goods and Service Tax amount which was already paid by the petitioner in respect of the said project. After filing the said application, the respondents were notified to attend the mediation. The said mediation failed as the respondents expressed their unwillingness to participate in the above-mentioned mediation process and further prayed to drop the proceeding of the mediation process. Hence, being aggrieved by the non-payment of the GST amount, the petitioner has preferred the instant writ petition.

Learned counsel for the petitioner states that he has made a demand before the appropriate authority vide letter dated 14.03.2022. The petitioner further contended that he is entitled to refund of his GST amount in terms of the circular dated 06.06.2018 issued by the National Rural Infrastructure Development Agency under the Ministry of Rural Development, Government of India.

Learned counsel for the petitioner further states that the petitioner shall be satisfied at this stage if its demand letter dated 14.03.2022 is treated as a representation by the authority and a decision is taken on the same within a time bound manner in the light of the circular issued by the Ministry dated 06.06.2018.

Learned counsel for the respondents appears and states that they are ready and willing to consider the petitioner’s demand letter dated 14.03.2022 as representation in a time bound manner and will pass a speaking order after affording an opportunity of hearing to the petitioner within a period of eight weeks from the date of communication of this order.

Needless to mention that the respondents shall take into consideration all the relevant notifications issued by the Government of India, specifically, the notification dated 06.06.2018 issued by National Rural Infrastructure Development Agency under the Ministry of Rural Development, Government of India while considering the demand letter/representation of the petitioner dated 14.03.2022.

With the above direction, the present writ petition is disposed of.

It goes without any saying that this Court has not gone into the merit of the present writ petition. Since no affidavit is called for, allegation levelled in the writ petition are deemed not to have been admitted.

(Gaurang Kanth, J.)