W.M.P. No. 3590 of 2024
in
W.P. No. 33436 of 2022

M. SUNDAR,J.

Captioned 'Writ Miscellaneous Petition' ['WMP' for the sake of brevity] has been taken out by writ petitioner in the main 'Writ Petition' ['WP' for the sake of brevity]. Though the prayer is for modification, it comes to light that a typographical error has crept in qua paragraph No.4 of order dated 13.12.2022 whereby WP No. 33436 of 2022 was disposed of. This 13.12.2022 order reads as follows:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.33436 of 2022

R.Subramaniam
S/o.Ramasamy
No.103, Nallappa Nagar,
Mahalingapuram
Pollachi - 642 002. *.. Petitioner*

Vs.

1. *The State of Tamil Nadu*
   Rep. by its Principal Secretary to Government
   Municipal Administration
   Secretariat, Fort St.George
   Chennai-600 009.

2. *The Commissioner*
   Pollachi Municipality
   Pollachi - 642 001.

3. *The Jurisdictional Officer*
   Commercial Tax Officer
   Pollachi East, Pollachi - 642 001.

4. *The Superintendent of GST*
   Head Quarters Preventive Unit
   Race Course Road,
   Coimbatore - 641 018. *..*

Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd respondent to reimburse the CGST and SGST (Rs.36,10,385/- + 36,10,385/- respectively) total amount of Rs.72,20,770/- paid by the petitioner for and on behalf of the 2nd respondent with interest at 18% rate of interest from the respective bills passed date as indicated in the chart filed in the typed set till date of payment within a time to be stipulated by this Hon'ble Court by considering the representation dated 07.11.2022 made by the petitioner.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.S.Ravikumar
Special Government Pleader for R1
Mr.B.Ananad for R2
Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)
for R3
Mr.Rajnish Pathiyil
Senior Panel Counsel for Customs and
Indirect Tax for R4

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ORDER

Captioned writ petition pertains to tenders floated by second respondent Municipality for construction of pavements, sheds and other *public utilities on 27.02.2015, 30.11.2015 and 02.03.2016. Writ petitioner participated in the tender process, became successful and agreements were entered into. It may not be necessary to delve into more facts and be detained by factual particulars in the light of submission of Mr.A.Sivaji, learned counsel on record for writ petitioner (in the hearing) that he abridges the prayer in the writ petition and it would suffice if there is a directive to the second respondent to dispose of the representation of the writ petitioner dated 07.11.2022 (Page Nos.89 to 92 of typed set of papers).*

2. Mr.S.Ravikumar, learned Special Government Pleader accepts notice for first respondent. Mr.B.Anand, learned counsel accepts notice for second respondent. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Tax) accepts notice for third respondent. Mr.Rajnish Pathiyil, learned Senior Panel Counsel for Customs and Indirect Tax accepts notice for fourth respondent.

3. As of now, owing to the abridged prayer, the issue is only as between the writ petitioner and second respondent namely, the employer and the contractor qua tenders and agreements.

4. As already alluded to supra, it is not necessary to delve into facts and it will suffice to say that it is a case of the contractor/writ petitioner that tenders were prior to 01.07.2017 before the GST regime kicked in and therefore, GST incurred by the contractor has to be absorbed by the contractor.

5. Aforementioned representation dated 07.11.2022 as placed before this Court is as follows:

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07 NOV 2022

Date: 07.11.2022

From:

R.Subramaniam,
Civil Works Contractor,
No.103, Nallappa Nagar,
Mahalingapuram,
Pollachi 642002.

7434

To:

1.The Commissioner,
Pollachi Municipality,
Pollachi 642 001.

2.Jurisdictional Officer,
Commercial Tax Officer,
Pollachi East,
Pollachi.

3.The Superintendent of GST,
Head Quarters Preventive Unit,
Race course road,
Coimbatore 641 018.

Sub: Request to return/refund of GST by the said Municipality, paid by the said contractor for and on behalf of the Pollachi Municipality.

Ref:

1. My written representation date 13.1.2020.
2. Na.Ka.No.0180/2020/E1 dt 10.2.2020 of the Pollchi Municipality.
3. My request/letter date 26.8.2022

Dear sirs,

1. Kind attention is invited to the above subject and references cited above. As a civil works contractor, I did the works allotted to me based on my tender floated

y Pollachi Municipality. I was selected as the uccessful tenderer. It involves the supply of materials or the civil works. The tenders were floated before .7.2017. Hence the impact of the GST, on the material upplied, were/could not be taken note of by the unicipality, as well as by me as the civil contractor, ince the GST came into force 1.7.2017.

2. On the account of the above, as a contractor, I urchased materials and used it for the construction work nvolved in the said tender floated by the said unicipality. I paid the cost of the materials including ST, purchased by me, as civil contractor for the above ork and I completed the work. As such the recipient Municipality" alone is responsible to pay the GST. This spect was admitted by the Municipality in their mmunication mentioned in the 2nd sited. On the account above, I am not all responsible/liable to pay the GST, re particularly when the tender was floated, the GST s not in force.

3. On the account of the pressure brought on me for e due payment of GST, for the tender floated before 7.2017, I paid the same for and of behalf the said unicipality. On account of the facts, the cipient "Municipality" alone is liable and responsible pay the GST and not me as a contractor. Further the nder was floated when the GST was not in force. On count of the fact that the GST was not in force when

(3)

he tender was floated, the Municipality, would not have nticipated the liability to pay the GST.

4. I am a regular tax and honest tax payer. I made a equest in writing as contractor on 10.08.2022 to the aid municipality. In order to have a smooth and cordial elationship with both, I paid the GST for work done by e of sum of Rs.36,10,385/- as CGST and Rs.36,10,385/- s SGST for and on behalf of the said municipality, though am not at all responsible and liable under law, to pay he GST for the work covered by tender floated by the aid municipality prior to 1.7.2017. The work done by me s contractor was accepted by the municipality and yments were made then and there.

5. On account of the honest and bonafide action of me, as honest tax payer, the above said amount Rs. ,10,385/- as CGST and Rs.36,10,385/-as SGST paid by me r and on behalf of the said municipality is bound to reimbursed by the said municipality. Hence the nicipality is bound to reimburse/refund to me. To this fect on 26.8.2022, I made a written request to the mmissioner, Pollachi Municipality, Pollachi. The same s also received by office of Municipality on 26.8.2022. ice, there is no reply to my written request dated 08.2022, I am constrained to make this request for und the GST paid on and behalf of municipality.

6. On account of the in-action is not refunding the amount of GST mentioned above, I am suffering a lot and I have borrowed from financial intuition for completing the other project. Hence, I am now making a writing request again for refund of GST, which I am not at all liable under law. It is therefore just and necessary to return/refund to me, within 10 days from the date of received this written request. Hence my request which is valid in law is to be considered and the said sums may be refunded/reimbursed to me with interest.

Thanking you

Yours truly

Annexure

1. My written representation of the contractor dt 26.08.2022.
2. Municipality letter 10.2.2020.

6. In the light of the abridged prayer, captioned Writ Petition is disposed of with a simple directive to the second respondent to dispose of the aforementioned representation of writ petitioner dated 07.11.2022 on its own merits and in accordance with law as expeditiously as the official business of the second respondent would permit and in any event, within a fortnight from today i.e., by 27.12.2022. The disposal proceedings of the second respondent shall be communicated to the writ petitioner under due acknowledgment within three working days therefrom.

7. Though obvious, it is made clear that there is no expression of view or opinion in this order and the second respondent shall dispose of the aforementioned representation on its own merits and in accordance with law. Captioned Writ Petition disposed of with the aforesaid directive. There shall be no order as to costs.'

2. Mr.M. Jaisingh for the WMP petitioner; Mr.P. Balathandayutham, learned Special Government Pleader for 1st respondent, who also represented Mr.B. Anand, learned counsel for 2nd respondent; Mr.T.N.C. Kaushik, learned Additional Government Pleader (Tax) for 3rd respondent and Ms.S. Lydia Steffi, learned counsel representing Mr.Rajnish Pathiyil, learned Senior Panel Counel for 4th respondent are before this Court.

3. The inadvertent typographical/secretarial error is, in the last line of pargraph No.4 the last word 'contractor' should read as ***employer***. Therefore, paragrah No.4 of aforementioned order dated 13.12.2022 in WP No.33436 of 2022 will now read as follows:

'4. As already alluded to supra, it is not necessary to delve into facts and it will suffice to say that it is a case of the

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contractor/writ petitioner that tenders were prior to 01.07.2017 before the GST regime kicked in and therefore, GST incurred by the contractor has to be absorbed by the ***employer.'***

4. All the counsel for respondents i.e., all the counsel for all four respondents submit that the prayer is innocuous, the matter is one of inadvertent secretarial error and therefore, they are neither objecting nor opposing the request of WMP petitioner.

5. In all other aspects, 13.12.2022 order in WP No. 33436 of 2022 will remain the same.

6. Captioned WMP is ordered in the aforesaid manner. There shall be no order as to costs.

23.07.2024

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