IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6750 of 2021
and
W.M.P.No.7312 of 2022

M/s.R.K. & Sons,
Civil Engineers & Contractors,
Rep.by its Partner – G.Ashwin Balaji,
No.12, 4th Cross, Brindhavan Road,
Fairlands,
Salem – 636 016,
Salem District. ... Petitioner

Vs

The Divisional Engineer,
Highways Department (C & M),
Chengalpattu Division,
Chengalpattu,
Kancheepuram District. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in Lr.No.620/2018/A1/ dated 17.06.2019 quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.E.Vijay Anand,
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the order 17.06.2019 passed by the respondent, thereby, the respondent rejected the claim of the petitioner seeking reimbursement of GST dues.

2. The petitioner was awarded certain contracts, such as Junction improvements, strengthening and improvements works in Chengalpattu (H) C & M. With regard to the payment of service tax, there was an exemption for Government Road Works (projects used by general public) and hence, the quotation submitted by the petitioner for the said works, does not include service tax. From 01.07.2017, the Government of India had introduced a New Act No.12 of 2017 imposing GST liability on all works contract, including the Government Project. It is mandatory to collect GST at 12% for the works contract provided to the Government. Therefore, the petitioner submitted a representation dated 12.09.2017 requesting the

respondent to pay GST amount along with their running account bill amount, so as to enable to comply with the new Rule. However, the said request was rejected. The petitioner raised a ground that, at the time of participation of tender, the value of tender be arrived at, by calculating the taxes prevailing at that time. In-built cost of excise duty relating to cement, bitumen, steel and emulsion etc., works out to 1.4% on the total cost. The Value Added Tax was calculated at 2% for the purpose of arriving at the contract value, after deducting the input tax credit towards VAT paid on local taxes. Further, the Government of Tamil Nadu adopted the policy matter in view of the introduction of GST which is a major change in Tax law. Therefore, the risk on account of change of Tax law in Government works contracts, due to introduction of GST, shall be borne by the procuring entity.

3. That apart, on a perusal of the tender conditions, it is seen that the tender document states that the tender rates for the item should be inclusive of all items for works required from proper execution of the items and no claim for extra payment on any scale will be entertained. Further, the

value of works completed by the petitioner before introduction of GST is only Rs.2,39,68,511/-. There is no GST to this amount. The value of works done after introduction of GST is Rs.3,11,85,540/-, which constitute all the works included in the package. For the said value of work done after implementation of GST by the contractor, the base value of the contract is arrived at using revised basic schedule of rate published by Public Works Department and Highways Department and it works out to Rs.2,82,99,468/- and sub-summed tax for the said work is arrived as Rs.28,86,072/- and it has been already paid based on 9.7% on the base value of the work done. Therefore, the petitioner has made claim before the respondent, which was rightly rejected and this Court finds no infirmity or illegality in the order passed by the respondent and the Writ Petition is devoid of merits.

4. Accordingly, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index:Yes/No

Neutral Citation/Yes/No
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To

The Divisional Engineer,
Highways Department (C & M),
Chengalpattu Division,
Chengalpattu,
Kancheepuram District.

G.K.ILANTHIRAIYAN, J.

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W.P.No.6750 of 2021

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