IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.14937, 22557, 22561, 22564, 22568, 22571, 17753, 17757, 17763, 17766 & 19540 of 2021 and
WMP.Nos.15812, 18927, 18930, 20821, 18933 & 18936 of 2021

WP.No.14937 of 2021

M/s.Thangam Constructions,
No.30/2, Fair Lands,
Bhavani Main Road,
Veerapanchatram,
Erode 638 004
Represented by its Partner ... Petitioner

Vs.

The Estate Officer and Superintending Engineer,
The Tamilnadu Agricultural University,
Coimbatore 641 003 ... Respondent

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Lr.No.EO/Civil Works/GST/2020 dated 17.11.2020 and quashing the same, and consequently, directing the respondent to reimburse the GST paid by the petitioner for the works contract services supplied to the respondent.

For Petitioner : Mr.R.V.Eswar,
Senior Counsel
for Mr.D.Prabhu Mukunth

For Respondent : Mr.S.Manikandan

COMMON ORDER

The writ petition in WP.No.14937 of 2021 has been filed challenging the order passed by the respondent dated 17.11.2020 thereby rejected the request made by the petitioner seeking reimbursement of GST paid by the petitioner. The other writ petitions have been filed for direction to the respective respondents to reimburse the GST paid along with appropriate interest and penalty by the respective petitioners .

2. The petitioners are the suppliers of works contract service and they had registered under the Tamilnadu Goods and Services Act, 2017 (hereinafter called as 'TNGST Act') and Central Goods and Services Act, 2017 (hereinafter called as 'CGST Act'). The respondents floated tenders in accordance with the Tamilnadu Transparency in Tenders Act, 1988 and its Rules, 1998 for various works. The tenders are floated through Tamilnadu Government e-procurement system. The petitioners

submitted their bid for tender. The relevant tender followed the two cover system consisting of pre qualification document with EMD in a separate sealed inner cover and financial bid document with percentage tender in a separate sealed inner cover. The petitioner in all the writ petitions became the successful tenderers and entered into a works contract with the respondent for the respective works. As per Rule 14(7) of the Tamilnadu Transparency in Tenders Rules, 2000, the financial bid quoted must be inclusive of taxes and duties. However, Goods and Services Tax came into force from 01.07.2017, after which the applicable GST must be separately shown in the tax invoice and therefore the contract value does not include the GST. Goods and Services Tax subsumed various erstwhile indirect taxes including Value Added Tax. Therefore, indirect tax on the works contract services must be paid in accordance to the provisions of GST enactments from 01.07.2017, which includes the balance or full work pertaining to a tender agreement or contract entered into prior to 01.07.2017.

2.1 After introduction of the GST Acts, rate of tax on works contract services provided to Departments was 18% (CGST 9% + SGST 9% as per Entry 3 Notification No.11 of 2017 - Central Tax (Rate), which stands amended to 12% (CGST6%+SGST 6%) vide Entry 3 (iv) 4 of Notification No.20/2017-Central Tax (Rate), with effect from 22.08.2017. Therefore, the rate of tax applicable to the works done by the petitioner herein after 01.07.2017 is 12% (CGST6%+SGST 6%) under the GST enactments. Further, applicable rate of GST for works contract services involving predominantly earth works i.e.constituting more than 75% of the value of the works contract to various Government Departments or Government entitles shall be taxed at 5% (CGST 2.5% + SGST 2.5%) as per Notification No.31/2017 – Central Tax (Rate) dated 13.10.2017. Therefore, the petitioners statutorily obliged to raise invoices in the manner prescribed in Section 31 of the CGST / TNGST Act, 2017. A registered person supplying taxable goods or services must issue a tax invoice showing the description, quantity and value of goods / value of services and the tax charged thereon and such other particulars as may be prescribed. The Government of Tamilnadu had issued Government order in this regard vide GO.Ms.No.296 Finance (Salaries) Department dated 09.10.2017, wherein it is provided that the supplier, while raising bills and tax invoice post-GST, will have to collect GST from the purchaser at revised rates of notified percentage of value of supply and remit the same to the respective Government. It also specifies that the contract value will not include GST. The contract entered into between the petitioners and respondents is in the line with the provisions of CGST / TNGST Act as well as the Government Order in GO.Ms.No.296 dated 09.10.2017. However, the respondents failed to discharge GST liability, for the works done by the petitioners as agreed in the contract.

2.2 In the writ petition in WP.No.14937 of 2021, the request made by the petitioner was rejected stating Special Conditions on Sales Tax thereby the petitioner is responsible for sales tax levy of sales tax on construction contracts, all the rates quoted in tender shall be inclusive of sales tax payable under general sales tax Act/ GST amended from time to time by the State and Central Government and that the bidders are responsible to file sales tax return and bidder is responsible to pay the amount as demanded by Commercial Tax Department. No request for payment of sales tax separately in addition to tendered rates due to and plea of subsequent levy or increase in tax will be entertained. Therefore, directed the petitioner to remit all the total tax from the total amount already paid to them and rejected the claim of the petitioner.

3. On perusal of the counter filed in some of the writ petitions by the respondents, revealed that to ease transition from the Era of Value Added Tax to Goods and Services Tax, Tamilnadu had issued Government orders in GO.Ms.No.264 Finance Department dated 15.09.2017 and GO.Ms.No.296 Finance Department dated 09.10.2017. Accordingly, the contractor is eligible to get GST amount after deducting the subsumed tax as per the GO.Ms.No.296 dated 09.10.2017.

4. Heard, the learned counsel appearing on either side.

5. Similar issue has already been dealt with by this Court in the case of ***Subaya Constructions Company Ltd. Vs. Commissioner of Municipal Administration, Chennai*** reported in ***2019 (31) GSTL 414(Mad)***, wherein it is held as follows:

> *18. There is a short history post Government Order also. This Government Order being G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017 came to be challenged in this Court by way of W.P.No.2307 of 2018. The challenge failed and the writ*

petition came to be disposed of by an order dated 28.01.2019 by a Hon'ble Single Judge of this Court. Writ petition was carried in apeal by way of an intra Court appeal being W.A.No.1499 of 2019 and the intra Court appeal also came to be dismissed by a Hon'ble Division Bench of this Court vide order dated 27.06.2019.

19. This Court is informed that the aforesaid challenge to G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017 has been given legal quietus and therefore, G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017 is now operating. This takes us to the question as to which portion of G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017 is applicable.

20. Here again, the task in instant writ petition is cut out as there is no disputation that paragraph 10(a) is applicable up to 30.06.2017 and paragraph 12 is applicable post 30.06.2017 i.e., on and from 01.07.2017. Paragraphs 10(a) and 12 of G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017, read as follows:

'10(a) If the supplier has furnished break up of taxes within the quoted value (bid value) at the time of submission of tenders, it shall be taken as the basis for estimating the value of subsumed tax. If, after negotiation,

the contracted value is less than the bid value, the tax quoted shall be proportionately reduced to arrive at estimate of the value of subsumed tax. For instance, if the bid value was Rs.50 lakh and the break up of tax is Central Excise Duty of Rs.1 lakh and VAT or CGST of Rs. 1 lakh, the corresponding subsumed tax as per his break up of taxes is Rs.2 lakh and after negotiation, the contracted value was reduced to Rs.48 lakh, the subsumed tax shall be taken as Rs.2 lakh x 48/50=Rs.1.92 lakh.

12.The procuring entities shall negotiate existing agreements with works contractors and enter into supplemental agreements with revised agreement value fixed as the original contracted value minus the value of subsumed tax arrived in paragraph 11 above plus GST as applicable. The procuring entities shall make payment of final bills accordingly, in cases where 'on account' payment has been made as per Government Order first read above and any excess payment, if made 'On account', shall be adjusted from out of 5 percent amount retained by the procuring entities.'

21. Therefore, the parties will now stand governed by paragraph 10(a) and paragraph 12 of aforesaid G.O.Ms.No.296, Finance [Salaries] Department, dated 09.10.2017.

22. The exercise of quantification qua para 10(a) shall be completed by both the parties as expeditiously as possible within 12 weeks from the date of receipt of a copy of this order.

6. In view of the above, the order impugned in the writ petition in WP.No.14937 of 2021 is quashed and the respondent in WP.No.14937 of 2021 is directed to reimburse the GST amount paid by the petitioner for the works contract services to the respondent, within a period of eight weeks from the date of receipt of copy of this order.

7. Insofar as the other writ petitions are concerned, the respondents are directed to pass appropriate orders to reimburse GST amount paid by the respective petitioners for the works done by them, within a period of eight weeks from the date of receipt of copy of this order.

8. With the above directions, the writ petition in WP.No.14937 of 2021 is allowed and the other writ petitions stand disposed of. It is made clear that if any documents are required for consideration to reimburse GST amount, the respective petitioners are directed to furnish

those documents as required by the respondents. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.04.2024

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To
The Estate Officer and Superintending Engineer,
The Tamilnadu Agricultural University,
Coimbatore 641 003

G.K.ILANTHIRAIYAN, J.

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W.P.Nos.14937, 22557, 22561, 22564, 22568, 22571, 17753, 17757, 17763, 17766 & 19540 of 2021

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