BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.9095 & 13587 of 2023
and
W.M.P.(MD) Nos.8240 & 11462 of 2023

W.P.(MD) No.9095 of 2023

M.Murugesan ... Petitioner

Vs.

1.The Secretary to Government
(Rural Development)
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 600 009.

3.The Additional Chief Secretary to Government,
Finance Department,
Fort St.George, Chennai - 600 009.

4.The Secretary to Government,
Highways and Minor Ports Department,
Fort St.George, Chennai - 600 009.

5.The Director/Commissioner,
Rural Development and Panchayat Raj Department,

Panagal Building,
No.1, Saidapet, Chennai - 600 015.

6.The Commissioner of GST and General Excise,
No:1, Williams Road,
Condonement,
Trichirappallai-620001.

7.The Superintendent (Head Quadrats),
Anti-Evasion,
O/o. Commissioner of GST and General Excise,
No:1, Williams Road,
Condonement,
Trichirappallai-620001.

8.The Assistant Commissioner (ST),
Pudukottai-1 Assessment Circle,
Madurai State Tax Division,
Pudukkottai.

9.The Divisional Engineer (Highways),
Construction and Maintenance,
Pudukkottai.

10.The Divisional Engineer (Highways),
Construction and Maintenance,
Trichy.

11.The Divisional Engineer (Highways),
NABARD and Rural Roads,
Pudukkottai.

12.The Project Director,
District Rural Development Agency,
Pudukkottai. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the first to fourth respondents and his subordinates to implement and follow the Government Order in G.O.Ms.No.114, Commercial Taxes and Registration Department, dated 22.07.2022 scrupulously in its letter and spirit and consequently directing the third to fifth respondents to pay service tax at the rate of 18% on the bills claimed on and after 18.07.2022 to the petitioner forthwith.

For Petitioner	: Mr.M.Rajarajan
For R1 to R5 & R8 to R12	: Mr.S.P.Maharajan Special Government Pleader
For R6 & R7	: Mr.N.Dilip Kumar Senior Standing Counsel

W.P.(MD) No.13587 of 2023

PL.R. & Co.
Having registered office at
2/32, Lembalakudi,
Thirumayam Taluk,
Pudukkottai-622 005,
Rep by its Managing Partner
R.Rethinam. ... Petitioner

Vs.

1.The Secretary to Government
Rural Development and Panchyat Raj,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai - 600 009.

3.The Additional Chief Secretary to Government,
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7.The Assistant Commissioner (ST),
Pudukottai-1 Assessment Circle,
Madurai State Tax Division,
Pudukkottai.

8.The Project Director,
District Rural Development Agency,
Pudukkottai.

9.The Project Director,
District Rural Development Agency,
Sivagangai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the first respondent and his subordinates to implement and follow the Government Order in

G.O.Ms.No.114, Commercial Taxes and Registration Department, dated 22.07.2022 scrupulously in its letter and spirit and consequently directing the eighth to ninth respondents to pay service tax at the rate of 18% on the bills claimed on and after 18.07.2022 to the petitioner forthwith.

For Petitioner	: Mr.M.Rajarajan
For R1 to R4 & R7 to R9	: Mr.S.P.Maharajan Special Government Pleader
For R5 & R6	: Mr.N.Dilip Kumar Senior Standing Counsel

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COMMON ORDER

By this common order, both these Writ Petitions are being disposed of.

2. These Writ Petitions have been filed for issuance of a Writ of Mandamus directing the Secretary of the Rural Development and Panchayat Raj Department, the Secretary of the Commercial Taxes and Registration Department, the Additional Chief Secretary of the Finance Department and the Secretary of the Highways and Minor Ports Department of Government of Tamil Nadu and their subordinates to implement and follow the Government Order in G.O.Ms.No.114,

Commercial Taxes and Registration Department, dated 22.07.2022 scrupulously in its letter and spirit and consequently directing the Divisional Engineer (Highways), Construction and Maintenance, Trichy, the Divisional Engineer (Highways), NABARD and Rural Roads, Pudukkottai, the Project Director, District Rural Development Agency, Pudukkottai and the Project Director, District Rural Development Agency, Sivagangai, to pay service tax at the rate of 18% on the bills claimed on and after 18.07.2022 to the petitioner forthwith.

3. It is confirmed by the learned counsel for either parties that the issue is covered by the decision of this Court in **Vediappan** Vs. **The Secretary to Government, Commercial Taxes and Registration Department and others**, *vide* order dated 22.09.2023 in W.P.No.22771 of 2023. Operative portion of the order dated 22.09.2023 in W.P.No. 22771 of 2023 reads as under:-

> *"This Writ Petition is disposed of after hearing the learned counsel for the petitioner and the learned Special Government Pleader for respective respondents.*
>
> *2.Although in paragraph No.3 of the counter affidavit, the 6th respondent has stated that the Writ Petition is not maintainable either on law or on facts, in*

paragraph Nos.6 to 8 of the counter affidavit, there is an undertaking to the effect that the 6th respondent had sought for an approval and for making payment of the differential GST at 6%, which stood enhanced with effect from 18.07.2022. Paragraph Nos.6, 7 & 8 of the counter affidavit of the 6th respondent reads as under:-

> *"6.It is submitted that the current prevailing rate of 12% GST was calculated while preparing the estimate. Hence, the approval and fund for making payment for the 6% difference cost has to be obtained from the competent authority. Action has been taken by this respondent to settle the 6% differences cost. After attending various remarks and observations made by the higher officials, finally this respondent addressed a letter to the Superintending Engineer, National Highways, Salem in Lr.No. 678/2022/A1 dated 17.07.2023 to take necessary action to get the 6% of GST from the National Highways Authority of India for making payment to the Contractor. In turn, the Superintending Engineer, National Highways, Salem has addressed a letter in Lr.No.302/2023/A2 dated 10.08.2023 to the Chief Engineer, National Highways, Chennai recommending to get 6% difference of GST. It is submitted that necessary orders are being expected by this respondent and on receipt of necessary orders and funds, the difference of 6% GST will be settled to the contractor. It is submitted that following part payments with 12% GST have been made in respect of above work.*

S. No.	**Month**	**Bill No.**	**Value of work done (Rs.)**	**12% GST**
1.	*August 2022*	*Ist & Part*	*8,42,86,022-*	*1,01,14,323-*
2.	*Sept 2022*	*IInd & Part*	*6,34,99,065-*	*76,19,888-*

3.	Sept 2022	IIIrd & Part	4,79,19,870-	57,50,384-
4.	Nov 2022	IVth & Part	3,88,36,525-	46,60,503-
5.	January 2023	Vth & Part	1,99,09,181-	23,89,102-
6.	March 2023	VIth & Part	3,04,41,694-	36,53,003-
7.	June 2023	VIIth & Part	6,14,81,930-	73,77,832-
	Total		**34,63,74,287-**	**4,15,65,035-**

7.It is pertinent to submit that the bill mentioned in May 2023 is not related to National Highways, Salem Division. It is also submitted that the bills mentioned in February 2023 & April 2023 were raised for different work for which 18% GST has been paid in July 2023.

8.It is submitted that on receipt of necessary funds and orders from the Competent Authority by Project Director, National Highways Authority of India, the petitioner will be settled the difference of 6% GST without any delay."

3.Recording the above, the Writ Petition is disposed of by directing the respondents to expedite the reimbursement of tax already paid by the petitioner and to pay the differential tax directly to the account of the respondents 8 & 9. The respondents 8 & 9 are directed not to take any coercive steps against the petitioner as the tax is to be paid to the Government and the amount to be paid also is also by the Government.

4.The 6th respondent is directed to dispose of the petitioner's representation dated 21.04.2023 and to take steps for getting the amounts due from the Government as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

5.The Writ Petition is disposed of with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs."

4. This Writ Petition is disposed of with the above directions in the order dated 22.09.2023 in W.P.No.22771 of 2023. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.06.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

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3.The Additional Chief Secretary,
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C.SARAVANAN, J.

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