16.04.2025
sayandeep
Sl. No. 03
Ct. No. 05

WPA 593 of 2025

S.S.T. Engineering
Vs.
The State of West Bengal & ors.

Mr. Amitava Ghosh
Mr. Tapan Kumar Dey
Mr. Rakesh Roy
.... for the petitioner
Mr. A. Ray
Mr. T.M. siddiqui
Mr. Tanoy chakraborty
Mr. S. Sanyal
... for the State
Mr. Sougata Mitra
Mr. Nikhil Kr. Gupta
Ms. Soma Chakraborty
Mr. Subhadeep Maitra
.....for the Purulia Municipality

1. The affidavit-of-service filed in Court today be kept on record.

2. The instant writ petition has been filed, *inter alia*, praying for a direction upon the respondents not to impose or demand goods and service tax in respect of the first R.A. Bill raised by the petitioner in connection with the execution with the contract dated 14th March, 2024.

3. Mr. Ghosh, learned advocate representing the petitioner would submit that as per the contractual terms with the Chairman, Purulia Municipality, since the BOQ rates have been calculated without providing for GST, the petitioner cannot be made liable at the

time of processing the petitioner's bill by the Municipality, for GST.

4. Mr. Ghosh, would submit that the respondents are insisting that unless the petitioner clears the GST, the bill shall not be processed. He would further submit that the respondents are also insisting upon the petitioner to make a pre-deposit of the GST, which is not permissible in law.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. It would transpire that Mr. Ghosh, learned advocate has placed reliance on the bill of quantity (BOQ) forming part of LOA cum work order issued by the Chairman, Purulia Municipality to demonstrate that the figure disclosed therein is exclusive of the taxes and having regard thereto, he submits that the respondents are estopped from deducting taxes from the petitioner.

6. In this context, I may note that since the nature of job covered under the contract is not exempted under the provisions of CGST/WBGST Act, 2017, the petitioner cannot evade the liability to make payment of GST. However, as per Sections 12 and 13 of the said Act, the time of supply of goods and the time of supply of services has been specifically provided and it has also been indentified that the liability to pay tax on goods and services shall arise at the time of supply as determined in accordance with the provisions of

Sections 12 and 13 of the said Act. Having regard thereto, and having regard to the provisions contained in Section 31 of Sub-Sections (4) and (5) of Section 31 of the said Act, though the obligation to file returns is with the petitioner, however, the municipality also cannot evade liability to make payment of GST, if such GST is included in the invoices.

7. This Court has, however, not gone into the issue as to whether the contract is a fixed rate contract and whether the tax component is required to be factored into the payment terms itself. It is for the parties to decide the same as per the contractual terms.

8. Having regard thereto, I am of the view that at this stage there is no scope to grant any relief to the petitioner apart from the clarification as aforesaid being provided.

9. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)