

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Smita Das De

W.P.A. No. 872 of 2022

M/s Pinki Construction & Anr.

Vs.

**The Executive Engineer,
PWD Dakshin Dinajpur Division & Ors.**

For the petitioner

: Mr. Vinay Shraff,
: Mr. Himangshu Kumar Ray,
: Ms. Shiwani Shaw,
: Ms. Swarnwarshi Poddar,
: Mr. Animitra Roy,
: Mr. Anish Mandal.

For the State

: Mr. Anirban Ray, Ld. GP,
: Mr. Md. T.M. Siddiqui, Ld. AGP.,
: Mr. Tanoy Chakraborty,
: Mr. Saptak Sanyal.

**Reserved on
Judgment on**

: **16/05/2025**
: **23/05/2025**

Smita Das De, J.:-

1. The petitioner seeks a mandamus directing inter alia, the respondents to remit the amount of the GST on Works Contract Services provided on or after July 1, 2017. The petitioner in the instant case is the partnership firm registered under the CGST Act and WBGST Act.

2. The case made out by the petitioner is that the respondent authorities have failed to appreciate that paragraph 3 (iv) of the Notification is confined in its application to Pre-GST contracts and cannot be invoked to deny reimbursement in respect of contracts executed after July 1, 2017 which are expressly governed by paragraph 4 of the very same Notification.

3. It is further submitted that the action of the respondent in denying GST reimbursement to the petitioners is arbitrary, unreasonable and discriminatory violating the mandate of the Article 14 of the Constitution of India which is contrary to the principle of equality before the Law and equal protection of the Laws.

4. The Learned Advocate for the petitioner relies upon a judgment of this Hon'ble High Court in the case of **Sushil Kumar Thard v. National Jute Manufactures Corporation Limited. & Ors. (WPA 4751 of 2023)** which was subsequently affirmed by the Hon'ble Supreme Court in the case of **National Jute Manufactures Corporation Limited v. Sushil Kumar Thard SLP(C) 25436 of 2023** wherein it has been held that even on contractual matters, the State and its instrumentalities are bound to act fairly, reasonably and in a non-arbitrary manner.

5. The Learned Counsel for the State is unable to contradict the submissions made by the petitioners.

6. Having heard both the parties and considering the materials available on record I am of the view that the reason given by the respondent No. 1 vide letter dated November 4, 2020 (in reply to the various letters of the

petitioners) is contrary to the mandate of the Notification dated August 16, 2017 since the matter pertains to POST-GST regime. Therefore, the question of revision of any contractual values of the contract due to impact of change of tax rate with regard to VAT/ Service Tax to GST does not arise at all.

7. From the plain reading of the Paragraph 4 of the Notification in question it clearly envisages that:

“With regard to post-GST contracts or ongoing project where estimates have been approved before 1st of July 2017 then in those work order can be given for supply of goods or service or both work contract, GST rates will be applicable. In other words the suppliers of goods/services or both has to pay WBGST and CGST on all taxable goods / services.”

8. In the light of the above Notification, the order passed by the respondent No. 1 is palpably wrong and the finding is ex facie bad, arbitrary and not sustainable in the eye of law. The respondent authority has passed the order without any proper application of mind and has misconstrued the applicability of the Notification in the context of the instant case. The respondents have failed to appreciate that Paragraph 3(iv) of the Notification is confined in its application to pre-GST contract and cannot be invoked to deny reimbursement in respect of contracts executed after July 1, 2017 which are expressly governed by Paragraph 4 of the same notification.

9. In view of the aforesaid, the order dated November 4, 2020 is set aside directing inter alia, the respondent No. 4, The Secretary, Public works

Department, Nabanna to revisit the issue of the petitioner as mentioned in the letters dated October 19, 2020 and April 23, 2021 respectively with regard to the payment of the GST amount against the gross bill during the period from 01.04.2018 to 31.03.2019 as per GST Law. However, it is made clear that I have not gone into the merits of the case but since the petitioner has already made payment of the GST amount against the gross bills for the period 01.04.2018 to 31.03.2019 out of their own pocket, hence, I direct the respondent No. 4 to consider the issue of reimbursement of the GST component in the light of Paragraph 4 of the Notification dated August 16, 2017 being Notification No. 5050-F(Y) and shall pass a reasoned order in accordance with law upon giving opportunity of hearing to the petitioner preferably within a period of six weeks from the date of communication of the order.

10. With the above observations and directions, the writ petition being **WPA 872 of 2022** stands disposed of. No order as to costs.

11. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Smita Das De, J.)