11.03.2025
Item No.8+9
Ct. No.01
RP/SM

FMA 340 of 2023
+
IA No.CAN 1 of 2023

M/s. Rajlaxmi Construction
Vs.
Executive Engineer, Hooghly Highway Division No.1 & Ors.

With

FMA 342 of 2023
+
IA No.CAN 1 of 2023

M/s. Biswas Enterprise
Vs.
Executive Engineer, Hooghly Highway Division No.1 & Ors.

Mr. Vipul Kundalia, Sr. Adv.
Mr. Partha Ghosh
Mr. Anurag Roy
Mr. Anindya Kanan
Mr. Dhirodatto Chaudhuri
Ms. Megha Agarwal
....For Appellants

Mr. Anirban Ray, Ld. GP, Sr. Adv.
Mr. T.M. Siddiqui, Ld. AGP, Sr. Adv.
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptal Sanyal
Ms. Sumita Shaw
...For the State-Respondent

1. These intra-court appeals are directed against the orders dated 2nd February, 2023 passed in WPA 18290 of 2021 and WPA 18299 of 2021 respectively. In the WPA 18290 of 2021 the appellant/writ petitioner prayed for a direction upon the authorities

to reimburse and/or make payment of GST to the tune of Rs.68,98,565.00 at the rate of 12% or Service Tax to the tune of Rs.86,23,206.00 at the rate of 15%, whichever is legally reimbursable to the appellant/writ petitioner within a fixed time frame. In WPA 18299 of 2021 the appellant/writ petitioner prayed for a direction upon the authorities to reimburse and/or make payment of GST to the tune of Rs.34,95,220.00 at the rate of 12% or Service Tax to the tune of Rs.43,69,025.00 at the rate of 15%, whichever is legally reimbursable to the appellant/writ petitioner within a fixed time frame The learned Single Bench disposed of both the writ petitions with the direction to the respondent authorities to consider the representations filed by the respective appellant within a time frame. Dissatisfied with such direction, the present appeals have been filed.

2. We have elaborately heard the learned advocates for the parties. Though extensive submissions were made by the learned senior advocate appearing for both the appellants and the learned government counsel but the issue in the instant case lies in a very narrow campus, namely, as to whether the appellants are entitled for reimbursement of the Service Tax/GST.

3. Before examining other documents, which have been filed along with the appeal, it is relevant to take note of the stand taken by the department in their affidavit-in-opposition filed in the writ petitioner, more particularly, in paragraph 5(c). It has been stated in the said paragraph that all works were completed and bills were raised before 01.07.2017 i.e. before the GST regime by the petitioner. Out of those bills, three ad-interim payments of Rs.32,42,000.00, Rs.31,87,000.00 and Rs.32,50,000.00 were made respectively on 30.06.2017 against three of those bills for the works mentioned in the tender invited during the year 2017-2018. Further, it has been stated that the writ petitioner claimed for Service Tax reimbursement against three bills and Service Tax was reimbursed for Rs.14,51,850.00 subsequently on 31.03.2018 vide bill no.986/17-18 by the answering respondent. Further, it has been admitted that other bills were raised prior to July 1, 2017(by the writ petitioners) but could not be paid immediately due to lack of available fund for the said works during the relevant period. Further, it has been admitted that those bills were paid to the writ petitioner subsequently on 31st March, 2018 during the GST regime. Having taken such a stand there is denial in certain other paragraphs, which have to be necessarily eschewed

in the light of the candid admission. The case of the appellants is not only such a stand taken in the affidavit-in-opposition but fortified with the Note Sheet which was prepared by the Executive Engineer, Bankura Highway Division, PW (Roads) Department dated 14.02.2020. The Note Sheet reveals approval granted by the Joint Secretary, PWD vide order dated 06.06.2017 and the subsequent order dated 29.12.2017 and it is stated that after issuance of post-facto approval from competent authority in phases, fund was placed to Executive Engineer, Hooghly Highway Division No.1 for making payments of all contractors engaged in five Divisions in the district of Hooghly in four different phases and Rs.92.86,40,311.00 has been spent for making payment of all contractor's bill including service tax. Further, it has been admitted that during the period of service tax, some agencies had already paid service tax and the same has been reimbursed along with work bill in the month of March 2018. Thereafter, the note sheet proceeded to give details break up of fund spent under Works head and Service Tax head of account in a tabulated format. Furthermore, the Note Sheet mentions that apart from the said fact, in the era of GST, some agency has paid GST in place of service tax. The Note Sheet then proceeded to give all the details concerning the appellants/writ petitioners' tender wise bill amount, fund spent in phases and service tax paid accordingly against different tender and GST to be paid and in the said tabulation format the actual amount to be reimbursed to the appellant in FMA 340 of 2023 is Rs.68,98,565/- and for the appellant in FMA 342 of 2023 is Rs.34,95,220.00. Further, the Note Sheet states that as of now GST is the only tax which has subsumed all earlier indirect taxes viz. Excise Duty, VAT, VST, Entry Tax, Service Tax etc. so in all these cases in which the work started prior to implementation of GST on 01.07.2017 and balance work/payment continued even after 01.07.2017 GST has to be paid at appropriate rate. Further, the Note Sheet mentions that earlier the rate of Service Tax was 15% which was payable to Central Government only, but now there is a total GST of 12% (6% of GGST + 6% SGST) in this case, which is equally distributed between the Central and State Governments. Further, the Note Sheet admits all the liability to reimburse the GST amount already paid to Government comes to Rs.1,03,93,785/- which is to be paid to the Contractors. Further, by paying service tax & GST total mount comes under Service Tax Head is Rs.1,18,45,635/- which will remain within the sanctioned cost against Service Tax Head. Thus, the total amount expenditure comes to

Rs.94,04,85,946/- which will remain within the total sanctioned cost including Service Tax. Ultimately, the Executive Engineer would state that all the bills/challans have attained finality and the bill amount has been paid excluding GST amount to the respective contractors with the copies of the challans evidencing payment of GST to the Government along with CA certificates was submitted by both the appellants and it transpires that a total of Rs.1,03,93,785/- has to be paid to the contractors of Service in terms of aforesaid tender agreement as the matter is already delayed. Apart from that there are other documents, namely the communication sent by the Joint Secretary, Public Works Department to the Chief Engineer (HQ), PW Directorate dated 06.06.2017. Along with the said communication there is an annexure which shows the amount which is to be paid for electrical works, contingencies and service and the total amount mentioned is Rs.1.06,15,11,197.00. This report has been prepared by the Superintendent Engineer, Presidency Circle, PWD and has been approved by the Chief Engineer, Head Quarter, Public Works Directorate, Government of West Bengal and Chief Engineer (South Zone), PWD & Nodal Officer of Singur Project. Therefore, it will be too late for the respondent now to contend that the sanction was a post facto sanction and, therefore, the question of payment of the amount to the contractor would not arise. This stand taken in the written instruction given to the senior officer is wholly contrary to the stand taken by the department. Thus, in the aforementioned document/report there is one other document containing revised demand of fund for payment for GST in connection with the work as prepared by the Executive Engineer, Bankura Highway Department dated 14.02.2020. This document contains a tabulated statement for first phase and in column no.10 it has been mentioned "Progress expenditure against Service Tax/GST upto date". In column no.11 it has been mentioned that "Expenditure (work + Service TAX/GST) during previous year. Column no.12 states "Progress expenditure (work + Service Tax/GST) upto date". Finally, in the remarks column it has been mentioned that the fund may be placed to Executive Engineer, Hooghly Highway Division No.1, PW (Roads) Directorate. All these documents clearly show that the claims made by the appellants were never denied or disputed by the department, rather accepted and supported by the department and the reason pleaded was lack of funds. Therefore, the respondent cannot wriggle out of the liability to make payment to the appellants.

4. In the result, the appeals and the connected applications are allowed and the orders passed by the learned Single Bench in the respective writ petitions are set aside and there will be a direction upon the respondent department to make payment of GST which has been estimated by the appellant which is Rs.68,98,565 in the case of M/s. Rajlaxmi Construction and Rs. 34,95,220/- in the case of M/s. Biswas Enterprise within a period of twelve weeks from the date of receipt of the server copy of this order. In the event the amounts are not refunded within the time frame the appellant in both the appeals are entitled to simple interest at the rate of 6% per annum from the date the amount becomes due and payable till it is actually paid.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]