W.P.No.48149 of 2025

N. SATHISH KUMAR, J.

Today the matter is taken up for hearing under the caption 'For Being Mentioned' at the instance of learned counsel for the petitioners.

2. Learned counsel for the petitioners submitted that this Court, by order dated 15.12.2025, has disposed of the W.P.No.48149 of 2025 by directing the 2nd respondent to consider the representation of the petitioner dated 04.12.2024. He further submitted that due to inadvertance, in paragraph No.6 of the order, in 10th line, the amount has been wrongly mentioned as 'Rs.1,36,11,096/-' instead of 'Rs.1,05,62,045/-'. Stating so, he prayed that the above said mistake may be corrected in the order by issuing suitable directions.

3. In view of the submission made by the learned counsel for the petitioner in the order passed by this court on 15.12.2025, in paragraph 6, *at 10th line, the amount of Rs.1,36,11,096/- shall be substituted with '**Rs.1,05,62,045**/-.*

4. In other aspects, the earlier order shall stand unaltered.

N. SATHISH KUMAR, J.

msr

5. The Registry is directed to issue order copy afresh after making necessary corrections as stated above.

19.12.2025

msr

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-12-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

WP No. 48149 of 2025

1. M/s. Kanthan Associates
Rep. By Proprietor K.Karunanidhi
No.934, 11th Sector,69th Street, Kk
Nagar, Chennai- 600 078.

Petitioner(s)

Vs

1. State Of Tamil Nadu
Rep By Its Principal Secretary Housing
And Urban Development, Fort St.
George, Chennai- 600 009.

2.The Executive Engineer And Ado,
Cit Nagar Division, Tamil Nadu
Housing Board, Anna Salai,
Nandanam, Chennai-35.

3.The Superintending Engineer
Project Circle (city), Tamil Nadu
Housing Board, C-48, Anna Nagar,
Chennai- 40.

4.The Chief Engineer, Cmda Complex
E And C Market Road, Koyambedu,
Chennai- 107.

5.The Additional Director
Directorate General Of Gt Intelligence
Chennai Zonal Unit, 5th Floor, Tower-
Ii, Bsnl Building, No.16, Greams
Road, Chennai-06.

6.The Superintendent Of Cgst And
Central Excise

Porur Ii Range, Porur Division, Newry Towers, 2054, Ii Avenue, Anna Nagar, Chennai-400. Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India, directing the 2nd Respondent to dispose off the representation made by the Petitioner dated 04.12.2024 and to direct the 2nd Respondent to disburse the difference of 6 Percent GST from 01.07.2017 for all the petitioners work contracts which are entitled to the GST rate at 18 percent as per 2nd Respondents Board Resolution No.5.12 dated 23.06.2023 with applicable interest and penalties that may be levied by the GST Authority due to this discrepancy in rates within a time frame as fixed by this Court.

For Petitioner:	Mr.Shrivirudishni V
For Respondents	Mr.V.Jeevagiridharan for R1 Additional Government Pleader Mr.D.Veerasekaran for R2 to R6 Standing Counsel

ORDER

Heard both sides and perused the materials placed on record. By consent of both sides, this writ is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed for a direction, directing the 2nd Respondent to dispose off the representation made by the Petitioner dated 04.12.2024 and to direct the 2nd Respondent to disburse the difference of 6 Percent GST from 01.07.2017 for all the petitioners work contracts which are entitled to the GST rate at 18 percent as per 2nd Respondents Board Resolution No.5.12 dated 23.06.2023 with applicable interest and penalties that may be levied by the GST Authority due to this discrepancy in rates.

3. The Petitioner is engaged in construction activities including Government projects/contracts. The Petitioner participated in a competitive bid issued by the Tamil Nadu Housing Board for construction of commercial complex with 2 basement floors and (G+7 floors) in CIT Nagar and construction of 1 Block of 168 LIG Flats at Ayyapakkam Village under Self Finance Scheme and the petitioner was awarded with the work contracts under Work Orders Nos.SPC1/DB/55/2020 and CC/DB/0209/2015 respectively.

4. In the payment certifications, payment against GST has been factored as 12% on the work contracts assigned by the 2nd respondent, GST collected was consistently remitted to the GST Department. The GST regime was introduced from 01.07.2017. GST was imposed on the subject services by way of Notification No.11/2017 Central Tax (Rate) Dated 28.06.2017, wherein, the prescribed GST rate for construction services and work contracts relating to supply of services in relation to construction of immovable property is 18%, effective from 01.07.2017 itself. However, the second respondent, through its payment certification and work orders issued to the petitioner, initially applied a reduced rate of 12% instead of statutory rate 18%. This discrepancy has resulted in an underpayment of GST amounting to 6% for all work rendered by the petitioner from 01.07.2017 onwards.

5. The Directorate General of Goods and Service Tax Intelligence, Chennai Zonal Unit, the fifth respondent herein verified the records of the Petitioner and observed that the Petitioner had not paid appropriate GST for the works executed / undertaken by them for the second respondent and issued a show cause notice demanding payment of interest and penalty.

6. The TNHB passed a resolution dated 23.06.2023, whereby, it has resolved to adopt the GST Department Notification for 18% GST for saleable projects from 01.07.2017 and 12% GST for Government Schemes and Board owned buildings from 18.07.2022. The petitioner is duty bound to follow the billing instructions and payment certifications issued by the TNHB, the subject of GST being an indirect tax, the liability of which shall be borne by the second Respondent, being the service recipient. Under these circumstances, the Petitioner sent representations 12.01.2024, 19.02.2024 and 04.12.2024 seeking for disbursement of the difference in terms of the Notification No.11 of 2017 dated 28.06.2017. The petitioner has thus far received only Rs.1,36,11,096/-, however, balance Rs/1,36,11,096/- is unpaid. Hence, seeks for a direction to consider the representations of the petitioner.

7. It is submitted by both sides that in similar writ petitions in W.P.Nos.21196 and 21198 of 2019 dated 01.08.2019 and W.P.(MD) No.25882

of 2022 dated 16.11.2022, was disposed of by this Court with the following observations/directions;

"□ ...realising the difficulties faced by the contractors, the Government of Tamil Nadu has also issued two notifications in G.O.(Ms)No.264, Finance (Salaries) Department, dated 15.09.2017 and G.O.(Ms)No.296, Finance (Salaries) Department, dated 09.10.2017, wherein, it has been held that liability under GST regime shall be borne by the procuring entity. The relevant portion is extracted hereunder:

G.O.MS.264 was issued on 15.09.2017 which provided that :

~ Since introduction of GST is a major change in taxation law, the government has taken a policy decision that the risk on account of change of tax law in Government works contract due to introduction of GST shall be borne by the procuring entity. The government therefore will notify detailed guidelines for evaluating net change in tax liability on contracts for the purpose of payments to be made to contractors and entering in to supplementary agreements.

~ The Public Works Department and Highways Department are in the process of revising schedule of rates to separate out taxes subsumed under the new GST regime from the schedule of rates.

~ In order to prevent bills of existing contractors being held up ostensibly due to lack of clarity on treatment of GST, it is directed that all departments and procuring entities shall make on account payment of bills presented by the contractors restricting payment to the value due as per existing contract agreement.

~ The payment of final bill in cases where on account payments have been made shall be made only after the notification of guidelines.

G.O.Ms.296 dated 09.10.2017 which is summarized below:

~ Under works contract entered in to prior to GST, value of subsumed taxes under GST needs to be separated out from the contracted amount to arrive at the value of supply. The key issue is to estimate the value of subsumed taxes carefully and accurately as possible.

~ Considering the necessity to provide for a transparent means of estimating subsumed tax, Government direct that following methodology shall be adopted for estimating the value of subsumed taxes.

~ In cases where the supplier has furnished break up of taxes with in the quoted 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 the estimate of value of subsumed tax.
~ In case, break up of taxes was not obtained or furnished in the bid document, the supplier may be asked to furnish the break up of taxes with in the contracted amount with details and explanations.~ The estimate of subsumed tax should also be worked out independently from the departmental estimates. Revises schedule of rates showing basic price and tax components separately are being issued by the public works department. Using the revised SOR, revised departmental estimates for the work without subsumed tax shall be arrived as per normal procedure. The difference between the departmental estimates arrived using earlier SOR with taxes would constitute the value of subsumed tax in the value of work.
~ The value of subsumed tax may finally be arrived at values estimated in (a) or (b) or (c) whichever is higher.

8. In these circumstances, 2nd respondent is directed to consider the representation of the petitioner dated 04.12.2024, on its own merits and pass appropriate orders in accordance with law, including the relevant Government orders after granting the petitioner reasonable opportunity within a period of four (4) weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition stands disposed of. No costs.

15-12-2025

dhk
Index:Yes/No
Speaking/Non-speaking order

Internet:Yes
Neutral Citation:Yes/No

To

1.The Principal Secretary
State Of Tamil Nadu
Housing And Urban Development, Fort St. George, Chennai- 600 009.

2.The Executive Engineer And Ado,
Cit Nagar Division, Tamil Nadu Housing Board, Anna Salai, Nandanam, Chennai-35.

3.The Superintending Engineer
Project Circle (city), Tamil Nadu Housing Board, C-48, Anna Nagar, Chennai- 40.

4.The Chief Engineer, Cmda Complex E And C Market Road, Koyambedu, Chennai- 107.

5.The Additional Director
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Chennai Zonal Unit, 5th Floor, Tower-Ii, Bsnl Building, No.16, Greams Road, Chennai-06.

6.The Superintendent Of Cgst And Central Excise
Porur Ii Range, Porur Division, Newry Towers, 2054, Ii Avenue, Anna Nagar, Chennai-400.

N.SATHISH KUMAR J.

dhk

WP No. 48149 of 2025

15-12-2025

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