BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A(MD)No.1047 of 2023
in
W.P.(MD).No.484 of 2023
and
C.M.P.(MD).No.7973 of 2023

1.Public Works Department,
Water Resources Department,
Represented by its Superintendenting Engineer,
Middle Cauvery Basin Circle,
Trichy-620 020.

2.The Commercial Taxes Department,
Assistant Commissioner (ST),
Kangayam Assessment Circle,
Kangayam. ... Appellants / Respondents

Vs.

M/s.P.Samiappa Gounder and Bros,
A Registered partnership firm,
represented by its partner, P.Samiappa Gounder,
No.41, Masjid Street,
Kangayam-638 701. ... Respondent / Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order passed in W.P(MD)No.484 of 2023 dated 17.03.2023 on the file of this Court and allow the writ appeal.

For Appellants : Mr.A.Kannan (for A1)
Additional Government Pleader

Mr.R.Sureshkumar (for A2)
Additional Government Pleader

For Respondent : Mr.P.J.Rishikesh
for Mr.A.Sivaji

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The department has filed this appeal challenging the order dated 17.03.2023 passed by the learned single Judge allowing W.P.(MD).No.484 of 2023 filed by the respondent herein.

2.The writ petitioner is a contractor. The appellant department issued a notification dated 11.12.2015 calling for tenders from eligible contractors to carry out the work of formation of a reservoir across Marudaiyar River near Kottari Village in Alanthur Taluk, Perambalur District. The writ petitioner's tender was accepted and agreement was also entered into. The agreement envisaged completion of the contract within 24 months. The time for performance was subsequently extended and it is not in dispute that the work has since been completed. In the meanwhile, the GST regime came into force with effect from 1.7.2017. As a result, the contract had to be reworked and a fresh agreement had to be entered into. Such issues arose across the State in respect of various Government contracts. In order to provide a proper guideline, the Government issued G.O.Ms.No.296, Finance department dated 9.10.2017. Paragraph No.10 of G.O.Ms.No.296 reads as follows:

> *10. Considering the necessity to provide for a transparent means of estimating subsumed tax Government direct that the following methodology P.T.O 3 be adopted for estimating the value of subsumed taxes in the contracted value of work:*
>
> *a. If the supplier has furnished break up of taxes within the quoted value (bid 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 estimate of the value of subsumed tax. For instance, if the bid value was Rs.50 lakh and the break up of tax is Central Excise Duty of Rs.1 lakh and VAT or CGST of Rs.1 lakh, the corresponding subsumed*

tax as per his break up of taxes is Rs.2 lakh and after negotiation, the contracted value was reduced to Rs.48 lakh, the subsumed tax shall be taken as Rs.2 lakh x 48/50 = Rs. 1.92 lakh.

b. In case, the break up of taxes was not obtained or furnished in the bid document, the supplier may be asked to furnish break up of the taxes within the contracted amount, giving details and explanations and based on this estimate of total subsumed tax shall be arrived. For instance, if for the contracted amount of Rs.48 lakh in the example above, the supplier states that the Central Excise Duty is Rs.1 lakh and VAT or CGST is Rs.1 lakh, after checking the reasonability of his claim, the subsumed tax may be arrived at Rs.2 lakh.

c. The estimate of subsumed tax should also be worked out independently from the departmental estimates. Revised Schedule of Rate (SOR) 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 value of subsumed tax in the value of work. For instance, if the Estimate arrived at using the revised SOR without subsumed taxes is Rs.45 lakh and that with earlier SOR with taxes is Rs.50 lakh, the value of subsumed

> *taxes in the value of work is Rs.5 lakh. If the contracted value for this same work of Rs.50 lakh is Rs.55 lakh, i.e. with tender premium of Rs.5 lakh, then the value of subsumed tax may be proportionately enhanced (or reduced in case of tender discount or minus tender) as follows: Rs.5 lakh x 55/50 = Rs.5.5 lakh. This method is considered as a good proxy for the actual value of subsumed tax for the purpose of determining the value of supply for payment to the supplier along with taxes under the GST laws.*

3.The question that called for consideration was whether the case of the writ petitioner has to be worked out by applying the formula set out in Paragraph 10(a) or Paragraph 10(c). The department took the stand that the formula set out in Paragraph 10(c) alone is applicable. Since there was no consensus between the parties, the writ petitioner has filed W.P.(MD).No.484 of 2023. The prayer in writ petition reads as follows:

> *Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, directing the first respondent to consider the various representations issued by the petitioner to the first respondent and direct the first respondent to pass appropriate orders in terms of G.O.Ms.No.296, dated 09.10.2017 and in tune with judgment of this Court in W.P.(MD).No.15967 of 2020, dated 08.03.2021 and W.P.Nos.*

21196 and 21198 of 2019, dated 01.08.2019 and consequently, direct the first respondent to remit the GST component to the petitioner within a time frame as fixed by this Court.

4.The learned single Judge found merit in the writ petitioner's contention and allowed the writ petition in the following terms.

15.A reading of said Clause would indicate that Clause 10(a) deals with item wise tender. It talks about the supplier furnishing the break up of taxes within the quoted value. Clause 10(b) deals with cases, where the break up of taxes was not obtained and furnished in the bid document. Clause 10(c) deals with the tax that has to be worked out independently for departmental estimates i.e; the schedule of rates.

16.Admittedly, in the instant case the contract relates to an item wise tender and not to the schedule of rate tender. In the judgment of this Court in W.P.Nos. 21196 and 21198 of 2019, dated 01.08.2019, the learned Judge has considered the similar set of facts. The learned Judge has discussed as to how and why the State Government had issued G.O.Ms.No.296, dated 09.10.2017 and the challenge to the said Government Order was disposed of by the

> *learned single Judge of this Court on 28.01.2019, which had been upheld by the Hon'ble Division Bench of this Court on 27.06.2019. The learned Judge has clearly held that the parties to the lis are governed by para No.10(a) of G.O.Ms.No.296, Finance (Salaries) Department, dated 09.10.2017. This order was taken up on challenge by the authorities in W.A.(MD)No.1267 of 2021. The Writ Appeal was also dismissed. Therefore, considering the language of Clause 10(a) and 10(c), this Court has to necessarily hold that the contract between the petitioner and the first respondent 11/13 https://www.mhc.tn.gov.in/judis W.P.(MD) No.484 of 2023 squarely falls within Clause 10(a) and not Clause 10(c) as contended. Therefore, considering the provisions of G.O.Ms.No.296, Finance (Salaries) Department, dated 09.10.2017 and the judgments of this Court discussed supra, the writ petition has to necessarily be allowed and is accordingly allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.*

Aggrieved by the same, the present writ appeal has been filed.

5.On response to a specific question to the learned Additional Government Pleader appearing for the appellants, who was assisted by department officials, the categorical response is that the writ petitioner had quoted only item-wise tender and his bid was not with reference to the schedule of rates maintained by the department. Paragraph No.12 of the tender notification itself reads as follows:

> "***12 The tenderer should work out his/her own rates without the reference being made to the Public Works Department estimates which are not open for inspection by the tenderer.***
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> *Based on the above procedures, the Superintending Engineer, WRD, Middle Cauvery Basin Circle, Trichy, has invited Tender Notice vide Lr. No. 7M/D5/F.1733/Kottarai / Dated 25.01.2016 for the above work, under Two Cover System Pre qualification and Item Rate Tender. (Tender Notice and Tender Schedule also enclosed).*
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> *The L1 contractor - Thiru P. Samiapagounder & Brothers, 27, Majeeth Street, Kangayam has quoted rates for each item Individually (Copy enclosed)*
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> *Before introduction of GST, the Schedule of Rates approved by the Engineer-in-Chief for each material, Labor and works includes Central Excise, Service Tax and State VAT etc., as levied by the Central and State Governments*
>
> *At the time of introduction of GST, PWD SCHEDULE OF RATES-2017-2018 WAS REVISED BY EXCLUDING ALL THE TAXES WHICH PREVIOULY WERE INCLUDED IN THE ORIGINAL SCHEDULE OF RATE 2017-2018 TO*

ARRIVE AT WITH BASIC RATE OF WORKS.

The rates approved in the original PWD SOR is inclusive of Excise Duty, VAT, Service Taxes. The Revised SOR, 2017-2018 was worked out by deducting the above Excise Duty, VAT, Service Taxes. Accordingly, the base rate was approved in the Revised SOR, 2017-2018.

6.The tenderer had to work out his/her own rates without reference being made to the Public Works Department estimates which were not open for inspection by the tenderer. We are satisfied that the learned single Judge approached the issue correctly. Interference is not warranted to that extent. The order of learned single Judge should be understood as upholding the application of clause 10(a) set out in the aforesaid G.O.Ms.No.296, Finance department dated 9.10.2017 alone. The details have not been gone into. It is for the writ petitioner to go before the department and place all the relevant facts and figures. The department will take a call regarding quantification of the GST component. The writ petitioner undertakes to furnish all the details to the department within two weeks from the date of receipt of a copy of this order. After receipt of the same, the department shall enter into a supplementary agreement with the writ petitioner within a period of six weeks thereafter.

7.With the above directions, this Writ Appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

[G.R.S., J.] **[K.R.S., J.]**
28.08.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
vsg

To

1.The Correspondent,
West Tirunelveli Higher Secondary School,
Nallur, Tirunelveli District.

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G.R.SWAMINATHAN, J

and

K.RAJASEKAR, J.

vsg

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