BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2025

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD) No.35386 of 2025
and
W.M.P.(MD) Nos.28075 & 28077 of 2025

M/s.SPK and Co.,
Rep. by its Joint Managing Director
Mr.N.Balasubramani Seyyadurai,
2/67, RC Middle Street,
Keelamudimannarkovil,
Kamuthi, Ramanathapuram,
Tamil Nadu - 623 603. ... Petitioner

Vs.

1.The Additional Commissioner,
O/o The Commissioner of CGST and Central Excise,
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
B.B.Kulam, Madurai – 625 002.

2.The Joint Director,
Directorate General of Goods and Service Tax,
Chennai Zonal Unit, 16, Greams Road,
Chennai – 600 006.

3.The Divisional Engineer,
National Highways, Madurai,
No.5, Besant Road, Chinna Chokkikulam,
Madurai – 625 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in L.R.No.CRF-10/2018-2019/A2, dated 26.04.2024 passed by the third respondent and quash the same and consequently direct the third respondent to reimburse/pay the differential GST Duty amount by considering the petitioner's representation dated 22.03.2024.

For Petitioner	: Mr.B.Vijay Karthikeyan
For R1	: Mr.R.Gowri Shankar Senior Standing Counsel
For R2 & R3	: Mr.R.Suresh Kumar Additional Government Pleader

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ORDER

In this Writ Petition, the petitioner challenges the order of the third respondent dated 26.04.2024 whereby the petitioner's request for remittance of the differential cost arising from the increase in GST from 12% to 18% was rejected and seeks a direction to the third respondent to reimburse/pay the differential GST amount by considering the petitioner's representation dated 22.03.2024.

2. The learned counsel for the petitioner submitted that in the present case, initially the petitioner was liable to pay tax on the invoices raised by the third respondent for the projects executed by the petitioner at the rate of 12%. Subsequently, the rate of tax was increased from 12% to 18% with effect from 18.07.2022. Though the work was completed on 08.06.2022, the third respondent raised the invoice at a later point of time. [Despite this Court spending about ten minutes, the learned counsel was not in a position to furnish the particulars regarding the exact date of the invoice.] The fact remains that the invoice was raised only after 18.07.2022. [None of the counsel is in a position to give particulars with regard to the date of payment made by the third respondent to the petitioner.] But, the fact remains that the payments were made by the third respondent to the petitioner after 18.07.2022.

3. Under these circumstances, by referring to the provisions of Section 14(a)(i) of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as 'Act'], the learned counsel for the petitioner submitted that the applicable rate of GST would be the rate prevailing on the date of issuance of the invoice or the date of receipt of payment, whichever is earlier and such date shall be treated as the date of supply for

the purpose of determination of GST. Therefore, he submitted that the petitioner made subsequent claims against the third respondent for the differential GST amount, which came to be rejected.

4. The learned counsel for the petitioner, by referring to the Circular dated 10.02.2023 bearing Reference No.RW/G-20017/26/2018-W&A issued by the Ministry of Road Transport and Highways (Planning Zone), Government of India, submitted that in cases where invoices were raised and payments were made subsequently and in terms of the provisions of Section 14(a)(i) of the Act, if there is an increase in the tax rate, the increased tax amount is required to be borne by the National Highways Authority. He further submitted that without considering the said Circular and statutory provisions, the third respondent rejected the petitioner's request *vide* the impugned order.

5. The learned Additional Government Pleader appearing for the second and third respondents submitted that in the present case, the work was not completed on or before 03.07.2020 as stipulated under the original agreement and therefore, the time for completion was extended till 20.05.2022 due to the petitioner's failure to complete the work within

the stipulated period. The work completion certificate was issued on 08.06.2022.

6. He further submitted that if there is any default on the part of the third respondent in making payment after the invoice is raised, the third respondent would be liable. However, in the present case, the default is on the part of the petitioner, though the work completion certificate was issued on 08.06.2022 and the invoices were raised and payments were made only after the revision of GST from 12% to 18%. Therefore, the default cannot be attributed to the third respondent. He further submitted that due to the fault on the part of the petitioner, the higher rate of GST cannot be fastened upon the third respondent.

7. Heard the learned counsel for the petitioner, the learned Standing Counsel for the first respondent and the Additional Government Pleader for the second and third respondents.

8. A reading of Section 14(a)(i) of the Act makes it clear that for the purpose of determination of GST, the date of supply would be either the date of issuance of the invoice or the date of receipt of payment,

whichever is earlier. In the present case, the work completion certificate was issued on 08.06.2022, whereas the revision of GST came into effect from 18.07.2022. For a period of more than 40 days thereafter, no invoice was raised.

9. From the submissions of the learned Additional Government Pleader appearing for the second and third respondents, it *prima facie* appears that the delay in raising the invoice prior to 18.07.2022 and in effecting payment subsequently is attributable to the petitioner and the same cannot be attributed to the third respondent. Therefore, the third respondent has rightly denied the claim for payment of the differential tax amount.

10. There is no dispute that this Court, by following the Circular dated 10.02.2023, can issue appropriate directions, as by virtue of the said Circular, if there is any increase in tax as on the date of payment or the date of issuance of invoice, the principal is liable to pay the differential tax. However, in the present case, as stated above, though the work completion certificate was issued on 08.06.2022, the invoice was raised after a lapse of 40 days, i.e. on 18.07.2022. It is evident that the default is

on the part of the petitioner and the same cannot be attributed to the third respondent.

11. Even otherwise, these are disputed questions of fact, which cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Further, this Court is in full agreement with the law laid down by this Court in the judgments cited by the learned counsel for the petitioner. However, the facts of the present case are entirely different. Therefore, this Court is not inclined to entertain the present Writ Petition.

12. Accordingly, this Writ Petition is dismissed with liberty to the petitioner to work out his remedy before the appropriate civil court or arbitral forum, wherein the learned Judge or the learned Arbitrator shall consider the petitioner's case on its own merits and without being influenced by any of the observations made by this Court in this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

10.12.2025

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Index : Yes / No
Neutral Citation : Yes / No

To

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KRISHNAN RAMASAMY, J.

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