

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPT No. 94 of 2020**

1. M/s D.A. Enterprises Through Its Proprietor Dinesh Kumar Mishra, Aged About 50 Years, S/o Shri R.B. Mishra, R/o C-63, Alka Avenue, Near, Uslapur, Station District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Water Resources Department Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Engineer Hasdeo Basin, Water Resources Department, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Superintending Engineer Water Resources Department, Circle Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Executive Engineer Maniyari Water Resources Division, Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

----Respondents

For Petitioner

: Mr. Prafull N. Bharat, Sr. Advocate along with
Mr. Harshal Chouhan, Advocate.

For State

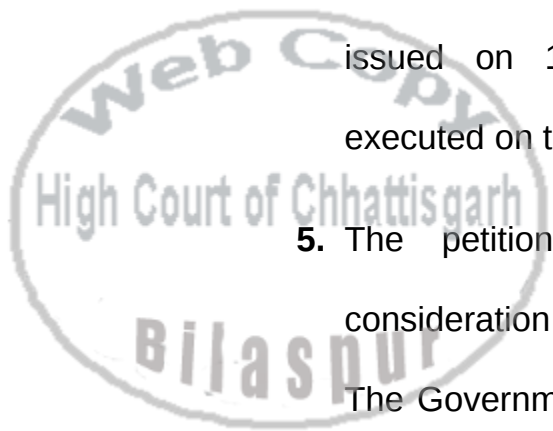
: Mr Rahul Jha, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17.11.2022**

1. Aggrieved by the order (Annexure P/1) dated 27.08.2020, the present writ petition has been filed.
2. Present is a second around of litigation. The earlier around of litigation was WPT No. 41 of 2020 decided 25.06.2020.



3. Vide the said order, this Court had directed the petitioner to approach the respondent No. 2 by way of a representation and the respondent No. 2 in-turn to take a decision on the representation that the Petitioner has made for refund of the additional tax burden suffered by the petitioner in the light of introduction of the GST regime w.e.f. 1st July, 2017 onwards.
4. The facts in brief is that the petitioner who is otherwise a Contractor taking contracts of civil natures with the respondents, one such NIT was floated by the respondents-Department on 02.02.2017 for different works. The petitioner was found the successful bidder for Nine such work published in the NIT. Nine separate work Orders were issued on 14.06.2017. Nine separate work agreements were executed on the same day i.e. on 14.06.2017.
5. The petitioner-Contractor had quoted the price taking into consideration the tax implication as it then stood, prior to July 2017. The Government of India introduced the Goods and Service Tax Act w.e.f. 01.07.2017. The tax payable under the GST law was 18% as compared to the value added tax and other taxes under the old regime, which comes to roughly 10 to 12 percent. Thus, the Petitioner-Contractor had to incur an additional tax burden in the course of the execution of the work Orders. The Contractors who had received the contracts prior to coming into force of the GST regime, had been agitating before the State Government in-respect-of the additional tax burden that they were faced with in the light of the introduction of the GST Law.





6. The Government of Chhattisgarh had been issuing Orders Department wise taking into consideration the demands so raised by the Contractors. The Orders that were passed by the State Government for the Public Works Department in-respect-of the said issue was dated 10.10.2018 (Annexure P/4). The relevant portion of which is being reproduced here-in-under:-

(1) ऐसे अनुबंधों जिनमें जीएसटी प्रभावशील नहीं थी, तथा 01 जुलाई 2017 के पश्चात प्रगति पर रहे, उनमें संबंधित कार्य के 01.07.2017 के पश्चात कराये गये कार्यों के प्रत्येक देयक में सामग्रियों की मात्रा का आकलन करते हुए उन पर जीएसटी के पूर्व Taxations की राशि की गणना, देयक राशि पर तत्कालिन व्यवस्था अनुसार VAT Tax की राशि अनुसार गणना एवं अब देयक पर जीएसटी की राशि की गणना (जीएसटी भार गणना के समय इनपुट टैक्स क्रेडिट घटाने का विशेष ध्यान रखते हुए) कर अंतर की राशि अनुसार संबंधित ठेकेदार की प्रतिपूर्ति जाएगी। इस हेतु संबंधित ठेकेदार द्वारा किये गए कार्य पर कुल कर भार में अंतर का साक्ष्य, जीएसटी रिटर्न का साक्ष्य देयक के संबंध में प्रस्तुत किया जाएगा एवं परिक्षण उपरांत कार्य संबंधित DDOs (Drawing and Disbursing Officers) द्वारा अतिरिक्त राशि के प्रतिपूर्ति की कार्यवाही जायेगी।

7. Similar Order was again issued by the Rural Road Development Agency under the Government of Chhattisgarh (Annexure-P/5) dated 26.09.2019. The relevant portion of this order dated 26.09.2019 is reproduced here-in-under:-

“17. GST shall be applicable as per Govt, of India & govt. of C.G. Amount of GST not included in BOQ. GST as applicable time to time will be paid to the Contractor during payment of running/final bills as rate quoted by Contractor.”

8. There was a similar order issued under the Urban Administration Department on 21.12.2017 (Annexure P/14), wherein also the Government had passed an order of similar nature Annexure P/14 of the said writ petition, which for ready reference is being reproduced here-in-under:-

“कार्य विभाग मैनुअल के एपेन्डिक्स 2.1 के क्लॉज क्रमांक 7.2 टैक्सेस में निम्नानुसार प्रावधान है:- The rate quoted by the Contractor shall be deemed to be inclusive of the sales and other levies, duties, royalties, cess, toll taxes of central and State Governments, local bodies and authorities that the



Contractor will have to pay for the performance of this contract. The Govt. will perform such duties in regard to the deduction of such taxes at the source as per applicable law. However, if "Service Tax" and cess on service tax or any other "New Tax" (not increase or decrease in existing place, duties, surcharge, accept royalty on minor mineral) is levied on the Contractor either by Central Govt. or State Govt. then the Commissioner / Chief Municipal Officer shall reimburse the "Service Tax" and cess on service tax and or "New Tax" amount: on submission of proof of such payment by the Contractor

उपरोक्त प्रावधान से ये स्पष्ट है कि, केन्द्रसरकार अथवा राज्य सरकार द्वारा अधिरोपित नये कर के लागू होने के दिनांक से पूर्व के प्रकरणों में संबंधित ठेकेदार को उसके द्वारा किये गये भुगतान का प्रमाण प्रस्तुत करने पर उसकी प्रतिपूर्ति पूर्व से लागू करों को समायोजित करने के उपरांत निर्माण कराने वाले एजेंसी द्वारा की जावेगी।"

9. It was in these contexts that the petitioner had filed the earlier around of litigation i.e. WPT No. 41/2020, which got disposed of on 25.06.2020 for an appropriate decision in respect of the petitioner who had got the work Orders before coming into force of the GST law. However, the Respondent-authorities vide impugned order (Annexure P/1) dated 27.08.2020 has refused to accept the request of the petitioner for refund of the additional tax burden primarily on the ground that the terms of the contract at the time of the execution of the work, did not provide for any such conditions of reimbursement. That in the said contract, the burden of payment of tax was that on the Contractor. For ready reference, the relevant portion of the order passed by the Respondents rejecting the claim of the petitioner vide the impugned order is as under:-

"तद्पश्चात् माननीय न्यायालय द्वारा दिनांक 25.06.2020 को पारित आदेश के परिपेक्ष्य में पुनः प्रतिवादी क्रमांक 4 कार्यपालन अभियंता मनियारी जलसंसाधन संभाग मुंगेली ने अपने पत्र क्रमांक 2785/व.ले.लि. दिनांक 22.07.2020 एवं पत्र क्रमांक 2800/ व.ले.लि. दिनांक 24.07.2020 (परिशिष्ट-ब) द्वारा प्रतिवादी को जीएसटी राशि के भुगतान की मांग पर संबंधित विवरण/अभिलेख सहित तीन दिवस के भीतर प्रस्तुत करने हेतु लेख किया गया है। इस संदर्भ में वादी ने अपने पत्र दिनांक 28.07.2020 द्वारा जीएसटी भुगतान दायित्वों से संबंधित अभिलेख प्रस्तुत नहीं किया गया है।



ठेकेदार (वादी) द्वारा विभाग के साथ किये गये सभी अनुबंधों में अनुबंध की कंडिका 2.17.1 “All dues regarding taxes including the sales Tax, Octroi duties, etc. levied on the Contractor's work by Government and local bodies or private individuals will be payable by the Contractor. The water Resources Department will grant a certificate for the quantities actually used on the work but will not entertain any claim on this account” के अनुसार (परिशिष्ट-स) ठेकेदार को सभी प्रकार के करों का भुगतान करना है, जिस पर किसी भी तरह का दावा विभाग को मान्य नहीं होता है। तदनुसार कार्यपालन अभियंता मनियारी जलसंसाधन संभाग मुंगेली के पत्र क्रमांक 4020/व.ले.लि. दिनांक 18.08.2020 द्वारा ठेकेदार को अमान्य करने की अनुशंसा कि गई है। (परिशिष्ट-द)

उपरोक्तानुसार शासन द्वारा लगाये गये सभी प्रकार के करों का भुगतान करना ठेकेदार का उत्तरदायित्व है, तथा अनुबंध के अंतर्गत किये गये कार्यों पर ठेकेदार को लगने वाले टैक्स की प्रतिपूर्ति विभाग द्वारा किये जाने का अनुबंध में कोई भी प्रावधान नहीं है।

ठेकेदार (वादी) अभ्यावेदन पर समग्र रूप से विचार कर जी.एस.टी भुगतान प्रतिपूर्ति संबंधी अभ्यावेदन अमान्य करते हुए प्रकरण निराकृत किया जाता है।”

10. A development that has subsequently transpired recently is that the Water Resources Department of the Government of Chhattisgarh itself now vide order dated 30.09.2022 has amended the terms and conditions of the contract and has amended the clause 2.17.1. For ready reference of Clause 2.17.1 and its amended portion is under:-

कंडिका	वर्तमान प्रवधान	संशोधित प्रावधान
Appendix 2.10 A Clause 2.17.1	2.17.1. The Financial bid offered by the Contractor shall be inclusive of royalties, all direct and indirect taxes of central and state governments i.e. GST (Goods and Services Tax), income tax and cess and local taxes as applicable. The Contractor shall have to pay all applicable taxes and cess for the performance of his contract. The government shall deduct such taxes at source as per applicable law. If any “New Tax” (not increase of decrease in existing taxes, duties, royalties, cess and surcharge etc.) is levied on the Contractor, the Engineer in	2.17.1 The Financial bid offered by the Contractor shall be deemed to be inclusive of all Central and State Government' taxes, other levies, duties, royalties, cess, tolls, taxes of Local Bodies and Authorities, including GST (Goods and Service Tax), that the Contractor shall have to pay for the performance of his Contract. The Governments will perform such duties in regard to the deduction of such taxes at source as per applicable law. The Contractor there upon



	charge shall reimburse the amount of such “New Tax” on submission of proof of such payments of tax by the Contractor.	necessarily and properly pay all the taxes/ levies/ cess/ royalties/ GST, as per law of the land. <u>However, if any other New Tax of levy or cess is imposed by statute or any deviation in existing royalty/ tax/ levy/ cess/ GST after the last stipulated date for the receipt of the tender including extensions, if any, shall be treated as New Tax and the Contractor there upon necessarily and properly pay such new taxes/levies/cess/GST/royalties. The Engineer in charge shall reimburse the amount of such “New Tax” on submission of proof of such payments of tax by the Contractor (deducted in case of decrease in existing taxes).</u>
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यह आदेश जारी होने की तिथि से तत्काल प्रभाव से लागू होगा।

11.The plain reading of the new amended Order of the State Government dated 30.09.2022 would reflect that the State Government has now for the Water Resources Department has taken a decision to ensure that the Additional Tax burden that has suffered by a Contractor in the event of a new tax that is imposed, the additional burden shall be reimbursed to the contract, subject to the Contractor furnishing the details of the difference of the tax liability and the additional tax that was required to be paid by the Contractor.

12.Learned counsel for the Petitioner submits that in the light of the recent decision that has been taken by the Water Resources Department on 30.09.2022, the claim of the petitioner has to be



reconsidered by the respondents as his case squarely fits in the amended provision of clause 2.17.1.

13. It is the further contentions of the counsel for the petitioner that even otherwise the decision not to reimburse would be too harsh a decision on the part of the respondents, for the reason that the Contractor is not at fault in any manner for incurring the additional tax liability that has occurred because of the introduction of any new tax. The bid and the price quoted therein by the Contractor always is taking into consideration the existing taxes and for which he is liable to pay and deposit. In case of additional liability incurred on account of the imposition of a new tax, the Department has to have a mechanism of compensating the Contractor to the extent of the additional tax liability that the Contractor had to bare.

14. It goes without saying that this aspect has been fairly appreciated by the Government itself and had taken a decision of reimbursing the additional tax burden to the Contractors when they had issued Orders for the various Departments under the State Government like: PWD, Chhattisgarh Rural and Development Agency and Chhattisgarh Urban Administration and Development Department and subsequently now vide the order dated 30.09.2022 in the Water Resource Department as well.

15. It is also relevant to take note of the submission made by the Counsel for the petitioner, when in the earlier round of litigation the writ petition preferred by the petitioner was disposed of in the light of another order of similar nature passed in WP(C) No. 460 of 2020 in the case of **M/s Manish Pipes Pvt. Ltd. Vs. State of Chhattisgarh**



and Ors. The said writ petition was in-respect-of a contract, under the Public Health Engineering Department. Upon a representation made by the said **M/s Manish Pipes Pvt. Ltd.** to the Department, the State Government has accepted his claim and has reimbursed the said contractor of the additional tax liability incurred in the light of the introduction of GST.

16. The action on the part of the respondents in rejecting the claim application also is one, which would be hit by Article 14 of the constitution of India for the reason that in the event of a Contractor having contract with the various Department of the Government, he gets the reimbursement of the additional tax liability from all other Departments except for one, thus it would be arbitrary and discriminatory. If the Government has taken a decision to protect the interest of the Contractor in the light of introduction of new tax law, it ought to have been uniformly made applicable to all the Departments to the State Government and it could not have been made applicable Departments wise without any sufficient cogent reasons. It would have been more reasonable and fair on the part of the State Government, if they would have issued one common Order for all the Department instead of passing orders Department wise taking into consideration the fact that the issue is of Policy matter rather than an individual dispute of a Contractor.

17. Though the State Counsel tried to justify the impugned order on the ground that the Water Resource Department could not have done anything without a policy decision by the Government and that all the claims of the petitioner have been settled strictly in accordance with



the terms of contracts. In the contract that was entered into with the petitioner, there was a specific clause i.e. 2.17.1 wherein the entire liability of payment of tax of any nature was that on the Contractor. Therefore, according to the State Counsel, the decision by the respondents while passing (Annexure P/1) was justified and does not warrant interference.

18. This contention of the State Counsel technically may be correct but testing the impugned order upon the ambit of Article 14 or for that matter taking into consideration the fact that the State Government itself practically when for all the other Departments have accepted such a claim of the Contractors where there were certain additional burden incurred by the Contractor in light of introduction of the GST. The Water Resource Department could not have taken a decision on the contrary and the very same Water Resource Department itself now has itself modified the terms of the contract, more particularly clause 2.17.7 whereby the facility for reimbursement of the additional tax burden, in event of new tax being imposed, has been ensured.

19. The impugned therefore deserves to be and is accordingly set aside / quashed. The petitioner at this juncture is directed to make a fresh claim showing the difference of the tax liability that was incurred at the time of the submission of the bids and the excess tax paid by him in the light of the introduction of the GST. Upon such claim being made, the respondents shall forthwith process the same and the petitioner be suitably reimbursed after due scrutiny and enquiry necessary in respect of the additional tax burden incurred by the petitioner.



20. Let the whole exercise be done within an outer limit of three months from the date the petitioner submits a fresh claim in-respect-of difference of additional tax liability.

21. Accordingly, the present writ petition stands disposed of.

Sd/-

(P. Sam Koshy)
JUDGE

Jyoti

