

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNAM

WP.No.14798 of 2018

V.Ramakrishnan ... Petitioner
vs.

1.Union of India,
rep.by its Secretary to Government,
Ministry of Railways,
Rail Bhavan,New Delhi-110 001

2.Railway Board,
represented by its Chairman,
Rail Bhavan, New Delhi-110 001

3.Financial Advisor & Chief Accounts Officer,
Southern Railway,
Park Town,
Chennai-600 003

4.Divisional Railway Manager(Works),
Office of the General Manager,
Southern Railway,
Park Town,
Chennai-600 003

5.The Principal Commissioner,
GST and Central Excise,
No.121, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus to direct the third and fourth respondents to implement the instructions issued by the second respondent in No.2017/CE-I/CT/7/GST dated 27.10.2017, in respect of works contract services done by the petitioner for the works order entered into prior to introduction of GST and work completed after implementation of GST.

For Petitioner : Mr.N.Murali

For Respondents : Mr.P.T.Ramkumar for R1 to R4
Mr.V.Sundaraswaran for R5

ORDER

Heard Mr.N.Murali, the learned counsel for the petitioner and Mr.P.T.Ramkumar, learned counsel, who accepts notice on behalf of R1 to R4 and Mr.V.Sundaraswaran, learned counsel, who accepts notice on behalf of R5.

2.The petitioner, who is a registered contractor with the Southern Railways, at Chennai Division, is before this Court seeking a writ of mandamus to direct the respondents 3 and 4 to implement the instructions issued by the Second Respondent on 28.10.2007, in respect of the works contract services done by the petitioner for the work orders entered into prior to introduction of GST and works completed after implementation of GST.

3.In this regard, the learned counsel for the petitioner has drawn the attention of this Court to paragraph No.3.1 of the Circular dated 27.10.2017, issued by the second respondent, which reads as follows:

"3.1 For dealing with impact of GST in individual contracts, a supplementary agreement is to be entered into with the contractor in consultation with financial advisor in terms of Para 1265 of the Engineering Code."

by referring to the above condition, it is submitted that a Supplementary Agreement has to be necessarily entered into with the contractor, as the percentage of GST paid by the petitioner is 12%; whereas, the Railways have been paying them only at 2% at the old rate and the balance 10% to be borne by the contractor. Therefore, it is submitted that necessary direction should be issued.

4.As rightly pointed out by the learned Standing Counsel for the Respondents/Railways, the petitioner, without submitting any representation to the respondents, has straight away approached this Court and seeks for a direction. Under such circumstances, this Court will not entertain the prayer to direct the respondents to do a particular thing, when the petitioner has not approached the respondents by way of representation or a request. Further, I find that the issue which is now pointed out by the petitioner is a larger issue and it is not a single contractor centric.

5.The learned Standing Counsel for the fifth respondent submitted that the fifth respondent is neither a proper nor necessary party to the writ petition.

6.The said contention is not acceptable for the reason that the Circular issued by the Railway Board dated 27.10.2017 states that for dealing with the impact of GST in individual

contracts, a supplementary contract has to be entered into. Therefore, to study the impact of GST in individual contracts, occasion may arise for the Railway Administration to consult the 5th respondent and in such an event, the 5th respondent would be in a position to issue necessary clarification or guidelines to the Railway Administration.

7.As pointed out earlier, since the petitioner has not given a representation to the authorities, the Court directs him to do so within a time frame. Accordingly, the writ petition stands disposed of by directing the petitioner to submit a representation to the fourth respondent along with a copy of this order within a period of two weeks from the date of receipt of copy of this order and on receipt of the representation, the fourth respondent shall consider the same and if any clarification is required, obtain the same from the fifth respondent and pass orders on merits and in accordance with law, within a period of 2 weeks from the date on which the clarification is received from the fifth respondent. No costs.

Sd/-

Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

msk

To

- 1.The Secretary to Government,
Union of India,
Ministry of Railways,
Rail Bhavan,
New Delhi-110 001
2. The Chairman,
Railway Board,
Rail Bhavan,
New Delhi-110 001
- 3.Financial Advisor & Chief Accounts Officer,
Southern Railway,
Park Town,
Chennai-600 003

4.Divisional Railway Manager(Works),
Office of the General Manager,
Southern Railway,
Park Town,
Chennai-600 003

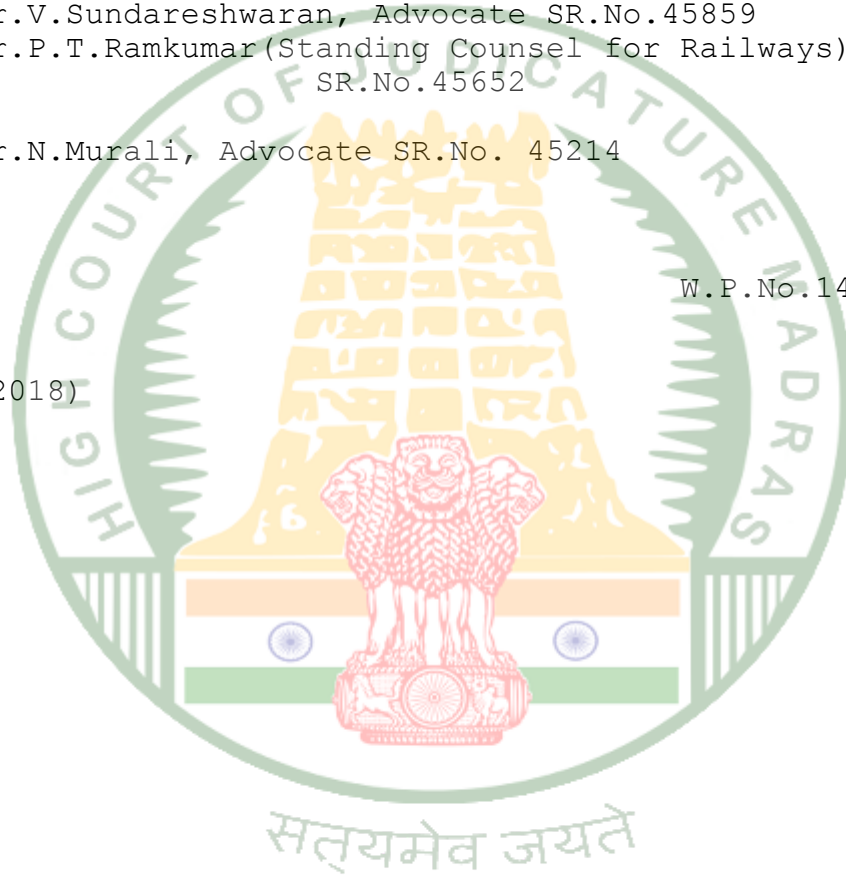
5.The Principal Commissioner,
GST and Central Excise,
No.121, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034

+1cc to Mr.V.Sundareshwaran, Advocate SR.No.45859
+1cc to Mr.P.T.Ramkumar(Standing Counsel for Railways),
SR.No.45652

+1cc to Mr.N.Murali, Advocate SR.No. 45214

W.P.No.14798 of 2018

SPD(CO)
GN(24/07/2018)



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