IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26222 of 2017
and
W.M.P.No.27871 of 2017

Coimbatore Road Contractors
Welfare Association,
Registration No.242/2010,
No.8/18, Aalayam Dynasty,
Sundaresan Layout,
Rep. By its Secretary,
R.Selvaraj ...Petitioner

Vs.

1.State of Tamil Nadu rep. By its
Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai – 9.

2.The Chief Engineer, National Highways,
HRS Camps, 76-Sarthar Patel Road,
Guindy, Chennai – 600 025.

3.The Regional Officer,
National Highways,
Cla.Rajaji Bhavan, Besant Nagar,
Chennai – 600 090.

4.The Superintending Engineer,
National Highways,
Omalur Road, Narasethipatti,
Alagapuram Post,
Salem – 636 004.

5.State of Tamil Nadu,
Rep. By its Secretary to Government,
Commercial Taxes Department,
Fort St. George, Chennai – 9.

6.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai – 5. ...Respondents

(RR 5 & 6 are impleaded as per order
dated 10.10.2017 in WMP.No.28123/2017)

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to include the Goods and Service Tax (GST) in the estimate itself and issue fresh Tender notifications for calling for the fresh tenders and till such time not to proceed with the tenders viz. 1.Tender Notification No.16/HDO/NH/2017-18 dated 29.08.2017 for tender dated 16.10.2017, 2.Tender Notification No.17/HDO/NH/2017-18 dated 29.08.2017 for tender dated 16.10.2017, 3.Tender Notification No.18/HDO/NH/2017-18 dated 30.08.2017 for tender dated 16.10.2017 and 4.Tender Notification No.19/HDO/NH/2017-18 dated 05.09.2017 for tender dated 24.10.2017 on the file of the 4th respondent.

For Petitioner : Mr.S.Doraisamy

For Respondents 1 to 4 : Mr.R.Rajeswaran
Special Government Pleader

For Respondents 5 & 6 : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mr.S.Doraisamy, learned counsel for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader accepts notice for respondents 1 to 4. With the consent on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is an association registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 bearing Registration No.242/2010. The Association was formed for the Welfare of the members of the Road Contractors, who have been carrying on works for the National Highways and Highways Department and other Governmental Organisation. The contractors used to remit 2% tax on value for the works executed by them towards the Works Contract Tax under the Tamil Nadu Value Added Tax, 2006 [hereinafter called as "the TNVAT"] in terms of Section 6 of the Act. The Central Goods and Services Tax Act, 2017 with effect from 01.07.2017 certain terms has arisen, which has compelled the petitioner to submit representations to the respondents.

3.The petitioner would state that on 22.08.2017, the Central Government issued notification notifying that 6% of the tax is leviable by the Central Government towards works contract. The State Government is empowered to levy towards contract tax in addition to the works contract tax imposed by the Central Government. Therefore, the contractor would be liable to pay 12% of tax towards the works contract. Therefore, the petitioner/Association made representations on 05.07.2017, 28.08.2017 and 11.09.2017 to the respondents stating that the contract works for which the agreements were executed prior to 01.07.2017, GST cannot be imposed and 2% VAT alone is applicable.

4.Alternatively, the petitioner/Association stated that if the petitioners are compelled to pay anything over and above 2%, the respondents, in addition to the value of the work done, has to remit the GST as per the notification, since the representations submitted by the petitioner/Association have not been considered and no orders were passed.

5.When the case came up for hearing, the petitioner was directed to implead the Secretary to Government, Commercial Taxes Department and the Commissioner of Commercial Taxes. Accordingly, an application was filed to implead and the same was ordered today.

6.Mr.K.Venkatesh, learned Government Advocate [Taxes] accepted notices for the newly impleaded respondents 5 & 6 and it appears that he had personally spoken to the Commissioner of Commercial Taxes, from which, it is seen that the Government also is in the process of discussing as to how the modality has to be worked out and what is the relief petitioner/Association is entitled to.

7.In any event, since the petitioner's representations are pending, it is to appropriate for the respondents to respond to the same by giving them a reply. The appropriate person, who would be in a position to give reply, is that the Commissioner of Commercial Taxes shall give a reply. Because all other authorities are the department of Highways and National Highways etc., who would not be in a position to specifically address the issue pointed out by the petitioner.

8.The learned Government Advocate has drawn the attention of this Court to G.O. Ms.No.264, Finance [Salaries] Department, dated 15.09.2017. The operative portion of the Government Order reads as follows :-

> " *5.Under the new tax regime, GST (comprising CGST, SGST and IGST) on works contracts for Government work was intially*

notified at 18 percent. This had resulted in representations from contractors of ongoing works for compensation by procuring entity for increased tax liability over and above the contracted value of work. The difficulties arising out of increased GST on works contracts for Government work was deliberated in the GST Council Meetings held on 20th August 2017 and 9th September 2017. Consequently, the GST on works contracts for Government work is being reduced to 12 percent. This move more or less balances the taxes on works contracts in the pre GST and post GST regime.

6.Pending notification of guidelines in the matter, the Government now direct that all departments and procuring entitles shall made 'on account' payment of bills presented by contractors, restricting the payments to the value due as per existing contract agreements. Any difference on account of final payment due based on the guidelines to be issued and the 'on account' payment made as above may be adjusted from out of the 5 percent amount retained with procuring entity. The payment of final bill in cases where on account payments have been made shall be *made only after the notification of the guidelines."*

9.In the light of the stand taken by the respective parties, there will be a direction to the Commissioner of Commercial Taxes to consider the representations given by the petitioner/Association and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. The authorised representative of the petitioner/Association may be afforded an opportunity of personal hearing by the Commissioner. The petitioner/Association is directed to communicate the copies of the representations along with a copy of this order to the Commissioner of Commercial Taxes for due and effective compliance of the above directions.

10.With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.10.2017

Note:
Issue order copy on 12.10.2017
Internet : Yes/No
Index : Yes/No
Sgl

To

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T.S.SIVAGNANAM., J.

Sgl

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