IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 7TH DAY OF JUNE 2018 / 17TH JYAISHTA, 1940

WP(C).No. 13630 of 2018

PETITIONER(S):
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REENA ENGINEERS AND CONTRACTORS PVT. LTD.
602-SHIV TOWERS, PATTO-PLAZA, PANAJI-GOA 403 001,
REPRESENTED BY ITS MANGING DIRECTOR, K.C.JAMES

BY ADVS.SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN
SRI.ALPHIN ANTONY
SRI.VIJAY V. PAUL
SMT.KARTHIKA MARIA
SMT.MARIA ROY

RESPONDENT(S):
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1. KERALA WATER AUTHOIRTY
JALABHAVAN, VELLAYMABALAM,
THIRUVANANTHAPURAM- 695 033
REPRESENTED BY ITS MANGING DIRECTOR

2. THE SUPERINTENDING ENGINEER
KERALA WATER AUTHORITY,
P.H.CIRCLE, MALAPPURAM- 676 505

3. THE EXECUTIVE ENGINEER
KERALA WATER AUTHORITY, PROJECT DIVISION,
MALAPPURAM- 676 505

R1 TO R3 BY SRI.P.BENJAMIN PAUL, SC, KERALA WATER AUTHORITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-06-2018, ALONG WITH WP(C)NO.13676/2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 13630 of 2018 (C)

## APPENDIX

**PETITIONER(S)' EXHIBITS:**

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| EXHIBITP1 | TRUE COPY OF THE WORK ORDER DATED 30-06-2017 ISSUED TO THE PETITIONER BY THE KERALA WATER AUTHORITY |
| EXHIBIT P2 | TRUE COPY OF THE BID SUBMISSION CONFIRMATION DATED 27-03-2017 OF THE PETITIONER |
| EXHIBIT P3 | TRUE COPY OF THE LETTER DATED 7-8-2017 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT |
| EXHIBIT P4 | TRUE COPY OF THE LETTER NO.SE/PHC/MPM/DB2/2085/2016 DATED 11-08-2017 ISSUE DBY THE 2ND RESPONDENT TO THE PETITIONER |
| EXHIBIT P5 | TRUE COPY OF THE CIRCULAR/GST/002/17 DATED 10-08-2017 ISSUED BY THE KERALA WATER AUTHORITY |
| EXHIBIT P6 | TRUE COPY OF THE LETTER DATED 15-12-2017 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT |
| EXHIBIT P7 | TRUE COPY OF THE REMINDER LETTER DATED 8-2-2018 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT |
| EXHIBIT P8 | TRUE COPY OF THE REMINDER LETTER DATED 9-3-2018 SENT BY THE PETITIONER TO THE 3RD RESPONDENT |
| EXHIBIT P9 | TRUE COPY OF THE REMINDER LETTER DATED 3-4-2018 SENT BY THE PETITIONER TO THE 3RD RESPONDENT |

**RESPONDENTS EXHIBITS:** NIL

//TRUE COPY//

P.A. TO JUDGE

dlk/14/6/18

**DEVAN RAMACHANDRAN, J.**

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W.P.(C) Nos.13630 & 13676 of 2018

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Dated this the 7th day of June, 2018

**JUDGMENT**

These two writ petitions are filed by the same petitioner, which is stated to be a Private Limited Company incorporated under the provisions of the Companies Act, 1956. The petitioner says that they are registered Class-A contractor who have been undertaking various works at the requisition of the Kerala Water Authority and such other Public and Private Limited undertakings.

2. The controversy in these cases relates to certain specified works already undertaken by the petitioner and the work orders have been placed on record as Ext.P1 in both the writ petitions. The petitioner asserts that the work has been completed and according to them, there is no dispute as to the bill or the other specifics with respect to the quality or nature of the work undertaken. The only issue, as per the petitioner, between them and the Water Authority is as to the manner in which the amount of tax under the GST regime is to be reckoned and adjusted as per the contract.

3. The petitioner says that, as is clear from Ext.P1, work orders, it was issued before the GST regime was brought into effect in the State of Kerala. They say that GST was implemented in the State of Kerala only with effect from 01.07.2017. The petitioner submits that the time when the notice inviting tender was published and tender process was undertaken, GST had not been implemented and hence, that the petitioner was allowed to enter into a contract, under which, they were obliged to pay Value Added Tax at the rate of 4.04%, Income Tax at the rate of 2.266% and Labour Workers' Welfare Fund of 1%. According to them, when the work was being executed by them, the GST regime was implemented, as per which, the contractors were obligated to pay tax at the rate of 18% instead of 4.04% VAT. The petitioner asserts that, as per clause 8.15 of the Notice Inviting Tender (NIT), the Water Authority had agreed that any excess in taxes and duties within contract period will be borne by the said Authority.

4. The pleadings and the materials available on record show that, in fact, these assertions are virtually admitted by the Kerala Water Authority and as is clear from a circular issued by

the Water Authority, dated 10.08.2017, a copy of which has been placed on record as Ext.P5 in both these writ petitions, the Water Authority clarified that *“the difference between GST paid and the sum of all the taxes subsumed under GST applicable at the time of bidding shall be absorbed by Kerala Water Authority on production of payment receipt of GST towards the Goods and Services on the respective item executed under the tender.”*

5. The petitioner thus claims that since they have completed the work and have paid the GST, they are entitled the benefit of Ext.P5 circular, for which, they have made several representations before the Water Authority, copies of which have been placed on record as Exts.P6 to P8 in W.P.(C) No.13676 of 2018 and as Exts.P6 to P9 in W.P.(C) No.13630 of 2018. They have filed these writ petitions praying that the Water Authority be directed to honour their bill and to pay them the GST already deposited by them.

6. I have heard Sri.Santhosh Mathew, the learned counsel appearing for the petitioner in both cases and the learned standing counsel appearing for the respondents.

7. Sri.Santhosh Mathew opens his submission in line with

the facts narrated above and according to him, the only reason, as is discernible from the counter affidavit filed by the respondents in these cases, for not complying with the stipulations in Ext.P5 circular, is that the concerned officer is awaiting directions from the Head Office. He points out that there is no other reason stated in the counter affidavit and according to him, this stand of the respondents, that they are awaiting permission from the Head Office, is completely untenable, since Ext.P5 circular has been issued by the Head Office, which is to say, the Managing Director of the Kerala Water Authority.

8. The learned standing counsel appearing for the respondents answers the submission of the petitioner by saying that though the payments are to be made by the Deputy Chief Engineer, Central Region of the Kerala Water Authority, he is not authorised to do so without the sanction and permission of the Head office, with respect to the amounts relating to the GST. According to him, this is the reason why the bills of the petitioner were forwarded to the Head Office and that until and unless directions are received from the said office, it would not

be possible for the Deputy Chief Engineer to take a decision in this regard on his own or to honour the claim unilaterally.

9. On an assessment of the submissions made before me as above, I am afraid that I cannot immediately accede to the stand taken by the respondents because, as is clear from Ext.P5 circular, the Head Office, which is to mean the Managing Director, has already taken a decision to compensate the contractors to the extent of the GST paid by them on account of the fact that, at the time when the contract was entered into, the GST regime had not been implemented. I, therefore, fail to understand why the Deputy Chief Engineer should take a stand in the counter affidavit that he is still awaiting directions from the Head Office, when the circular makes it clear that all such payments are to be made to the contractors.

10. In any event of the matter, so long as the respondents do not have a case that the petitioner has not paid the GST amount or that he has not completed the works in question satisfactorily, it would not be reasonable on their part to keep these claims pending *ad infinitum*. I am certainly of the view that a decision on this regard has to be taken by the competent

Authority imperatively and without any further delay.

11. In the result, I order these writ petitions directing the first respondent - Managing Director of the Kerala Water Authority to immediately take up Exts.P6 to P8 representations of the petitioner produced in W.P.(C) No.13676 of 2018 and Exts.P6 to P9 produced in W.P.(C) No.13630 of 2018 and to issue orders on the same, adverting specifically to the terms of circular No.GST/002/17, dated 10.08.2018, issued by the said Authority, as expeditiously as possible but not later than one month from the date of receipt of a copy of this judgment.

If the first respondent finds that the amounts are due to the petitioner, in terms of the directions in the afore-mentioned circular, then the said Authority shall ensure that the amounts are paid without any further delay but not later than two months thereafter.

Sd/- **DEVAN RAMACHANDRAN**
**JUDGE**

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