



2024:KER:70722

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 23RD DAY OF SEPTEMBER 2024 / 1ST ASWINA, 1946

WP(C) NO. 33109 OF 2024

PETITIONER/S:

**M/S. SREEDHANYA CONSTRUCTION COMPANY,
TC 9/875, SASTHAMANGALAM P.O.,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING PARTNER
SHRI. G. CHANDRA BABU, PIN - 695010**

**BY ADVS.
G.MINI(1748)
A.KUMAR (SR.)
P.J.ANILKUMAR
P.S.SREE PRASAD
BALASUBRAMANIAM R.**

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
DEPARTMENT OF TAXES, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001**
- 2 PROJECT DIRECTOR,
PROJECT MANAGEMENT UNIT, KERALA ROAD FUND BOARD,
TC 27/284, SPORTS COMPLEX, CHANDRASEKHARAN NAIR
STADIUM, PALAYAM, THIRUVANANTHAPURAM, PIN - 695033**
- 3 THE EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER, PWD ROADS DIVISION,
THIRUVANANTHAPURAM, PIN - 695033**
- 4 COMMISSIONER OF STATE GST,
STATE GST DEPARTMENT, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM, PIN - 695002**



2024:KER:70722

WP(C) Nos.33109 & 33117 OF 2024

2

**5 THE ADDITIONAL CHIEF SECRETARY (FINANCE),
FINANCE (INDUSTRIES & PUBLIC WORKS - B) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, PIN - 695001**

**SMT. JASMINE M M (GP),
SRI E C BINEESH (SC KRFB)**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.09.2024, ALONG WITH WP(C).33117/2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



2024:KER:70722

WP(C) Nos.33109 & 33117 OF 2024

3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 23RD DAY OF SEPTEMBER 2024 / 1ST ASWINA, 1946

WP(C) NO. 33117 OF 2024

PETITIONER/S:

**M/S. SREEDHANYA CONSTRUCTION COMPANY,
TC 9/875, SASTHAMANGALAM P.O., THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING PARTNER
SHRI. G. CHANDRA BABU, PIN - 695010**

**BY ADVS.
G.MINI(1748)
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REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
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THIRUVANANTHAPURAM, PIN - 695001**
- 2 PROJECT DIRECTOR,
PROJECT MANAGEMENT UNIT, KERALA ROAD FUND BOARD,
TC 27/284, SPORTS COMPLEX, CHANDRASEKHARAN NAIR
STADIUM, PALAYAM, THIRUVANANTHAPURAM, PIN - 695033**
- 3 THE EXECUTIVE ENGINEER,
OFFICE OF THE EXECUTIVE ENGINEER, PWD ROADS DIVISION,
KOLLAM DIVISION, KOLLAM, PIN - 691001**
- 4 COMMISSIONER OF STATE GST,
STATE GST DEPARTMENT, TAX TOWERS, KARAMANA,
THIRUVANANTHAPURAM, PIN - 695002**



2024:KER:70722

WP(C) Nos.33109 & 33117 OF 2024

4

**5 THE ADDITIONAL CHIEF SECRETARY (FINANCE),
FINANCE (INDUSTRIES & PUBLIC WORKS - B) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, PIN - 695001**

**SMT. JASMINE M M (GP),
SRI. E C BINEESH (SC KRFB)**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23.09.2024, ALONG WITH WP(C).33109/2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



JUDGMENT

[WP(C) Nos.33109/2024, 33117/2024]

Can a person who enters into a contract with the Government or its agencies that contains a specific clause that the rate quoted shall be inclusive of '*GST & other taxes*' turn around and claim that he is entitled to Goods & Services Tax (GST) over and above the rate quoted by him? This is the short question that arises for consideration in these cases.

2. Petitioners are common in these two writ petitions. Since the issues arising for consideration in these two writ petitions are identical, these writ petitions can be conveniently disposed of by a common judgment. The exhibits and the parties referred to in this judgment are they are marked and they appear in W.P.(C.) No.33109 of 2024, unless otherwise indicated.

3. The Petitioner is a partnership firm engaged in undertaking contracts for construction of roads and bridges and is stated to be a registered 'A class' Contractor with the



Kerala Public Works Department. It entered into agreements with the Kerala Road Fund Board for certain works. The relevant portions of the contract agreement executed between the petitioner and the Kerala Road Fund Board is marked in both these writ petitions as Ext.P1. While the contract agreement, which is subject matter of W.P.(C.) No.33109 of 2024 relates to improvements to Palode-Brimore road, the agreement, which is subject matter of W.P.(C.) No9.33117 of 2024 relates to improvement to Ayoor-Ithikkara road from km7/500 to 18/900. Clause (43.1) of the agreement (in both cases) read as follows:-

“43.1 The rates quoted by the Contractor shall be deemed to be inclusive of the GST and other taxes that the contractor will have to pay for the performance of this Contract. The employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.”

According to the petitioner, though the agreements in question specified as above, there are certain circulars and



instructions issued by the Government from time to time, which indicate that the petitioner in these writ petitions are entitled to disbursement of GST at the applicable rate over and above the amount quoted by the petitioner for the work.

4. Sri. A. Kumar, the learned Senior Counsel appearing for the petitioner in these cases on the instructions of Adv. G. Mini has extensively referred to Ext.P2 Circular dated 14.12.2017, Ext.P3 Circular dated 01.03.2019, Ext.P4 letter dated 07.05.2024, Ext.P5 letter dated 02.08.20224 and Ext.P9 letter dated 17.04.2024 in support of the contention that on account of various factors (which are noticed in the Circulars referred to above), the Government had decided that the estimate for a work shall be prepared without factoring GST and GST shall be paid over and above the amounts quoted by the contractor in respect of the work in question. Substantial reliance is placed on the terms of Ext.P4 letter dated 07.05.2024 and to the examples cited therein to indicate that the petitioner was entitled to claim GST over and above the amount quoted by



the petitioner in respect of the work. He submits that when the Government has for itself decided that the amount of GST will be paid over and above the amount for which the work was tendered by the petitioner, it does not lie within the jurisdiction of the Court to deny that benefit to the petitioner on any interpretation of the Circulars referred to above. It is submitted that there were substantial uncertainties immediately after the implementation of Goods and Services Tax with effect from 01.06.2017. It is submitted that it is in such circumstances that the Government thought it fit to issue Circulars/instructions from time to time to deal with situations not contemplated at the time of entering into the contract. It is pointed out that if the terms of the Circulars and the letters referred to above are given their full effect and meaning, the petitioner is clearly entitled to the reimbursement of GST over and above the amount for which the work was tendered by the petitioner. Learned Senior Counsel appearing for the petitioner in these cases would further submit that the claim



of the petitioner cannot be defeated by stating that the petitioner would not have been the lowest tenderer if the petitioner is allowed to claim the quoted amount plus 18% GST. It is submitted that this is not a case where the competing claims of rival tenderers is being considered by this Court and the Government/its agencies cannot shy away from complying with the terms of the Circulars/letters referred to above. It is submitted that the Kerala Road Fund Board is also a Government agency and the agreement has been executed on behalf of the Governor of Kerala. Therefore, the instructions contained in the circulars/letter referred to above clearly apply to the work executed by the petitioner for the Road Fund Board.

5. Smt. Jasmine M.M, the Learned Government Pleader appearing for respondent Nos.1, 3, 4 and 5 would submit that the Circulars and the letters/instructions referred to above are clearly not applicable to a case where the tender document and the agreement clearly specify that the rate to be quoted shall be inclusive of GST. It is



submitted that any other interpretation would lead to an anomalous situation where the sanctity of the tender process itself will be affected. In other words, it is submitted that if the petitioner is allowed to claim GST over and above the tendered amount when the contract agreement clearly specified that the rate quoted shall be inclusive of GST, the same may lead to substantial financial loss to the Government/its agencies on account of the fact that the successful contractor would have been selected on the basis of the fact that he had quoted the lowest rate and by paying GST over and above the quoted rate, the petitioner might no longer be the lowest tenderer.

6. Having heard the learned Senior Counsel appearing for the petitioner in these cases and the learned Government Pleader and having regard to the facts and circumstances of these cases, I am of the view that the petitioner has not made out any case for grant of reliefs. A reference to Clause (43.1) of Ext.P1 agreement executed by the petitioner (in both cases) will clearly show that the



amount quoted by the petitioner is inclusive of GST and other taxes. Obviously this was the condition in the Notice Inviting Tenders also. When the terms of the agreement executed by the petitioner clearly show that the rate quoted by him will be deemed to be inclusive of GST, the petitioner cannot, on the strength of the Circulars/letters referred to above, claim that it is entitled to GST over and above the amount for which the work was tendered taking into account the amount quoted by the petitioner. The contract conditions are not vague and there is no occasion to apply a *contra proferentem* construction. To be fair to the learned Senior Counsel for the petitioner he did not even suggest that such a rule must apply to the contract in question.

7. The petitioner has no case that the rates quoted by him were exclusive of GST. Its case proceeds on the basis that, going by the Circulars/letters/instructions referred to above, the Government has clarified (along with illustrations) that, in similar situations, the contractor will be entitled to the rate quoted plus GST at the rate of 18% and, therefore, it is



entitled to the same. However, this cannot be accepted. A reading of the letters/instructions referred to in the writ petitions clearly show that, those Circulars/letters/instructions do not apply in a case where the Notice Inviting Tender or the agreement executed between the contractor and the tendering agency clearly specified that the rates quoted shall be deemed to be inclusive of GST. Though certain portions of the letter dated 07.05.2024 and the illustrations given therein, at first blush, appear to support the case of the petitioner, on closer scrutiny, it must be held that even those instructions do not support the case of the petitioner. The Circulars/instructions referred to above deal with the preparation of estimate and not with the final tendering process. It clarifies that while preparing estimates for the purpose of administrative/financial sanction, the estimates must be prepared without including GST element. However, that does not lead to a conclusion that in cases where the agreement is specific that the rates quotes shall be deemed



to be inclusive of GST, the contractor is still entitled to claim GST. A glance at Ext.P5 communication itself indicates that the Circulars/instructions were intended to cover various situations as contemplated therein. For the sake of clarity, the various situations contemplated following the migration from the VAT regime to the GST regime as contained in Ext.P.5 are extracted below:-

Work Completion	Tax liability
Works completed during pre-GST period and payment fully received before 30.06.2017	VAT rate
Works completed during pre-GST period but payment received partially before 30.06.2017	VAT rate
Work completed during pre-GST period and part payment received after 01.07.2017	VAT rate
Work completed during pre-GST period and full payment received after 01.07.2017	VAT rate
Works completed post-GST period and full payment received after 01.07.2017	GST rate
Part work completed during pre-GST period and part work completed post GST Period	VAT rate for completed works during pre-GST period irrespective of the payment. Remaining works at GST rate



Works executed in GST period and advance received during pre-GST period	GST rate
Agreement executed during pre-GST period and works commenced in GST period. Payment not received	GST rate
Works not yet started, but advance received before 01.07.2017	GST rate

It is clear from the above that the communications/instructions referred to above, on which the petitioner places considerable reliance, deal with completely different situations and do not deal with situations where the rate quoted was deemed to be inclusive of GST.

8. The submission of the learned Government Pleader that if the contention of the petitioner were to be accepted, the sanctity of the tendering process itself will be affected is only to be accepted. This can be illustrated by means of an example. When the tender document/agreement contemplated that the rates quoted shall be deemed to be inclusive of GST and the successful bidder quotes Rs.100/- for a particular item of work, he cannot be permitted to,



2024:KER:70722

WP(C) Nos.33109 & 33117 OF 2024

15

thereafter, turn around and claim that he must be given Rs.100/- plus 18% GST (total of Rs.118) as there may have been situations where another bidder, after noticing the conditions in the tender document would have quoted Rs.105/- inclusive of GST and would not have become successful on account of the fact that the successful bidder has quoted only Rs.100/-. In such a situation, if the successful bidder is allowed to claim 18% GST over and above the rate of Rs.100/- quoted by him, the Government/its agencies would end up paying Rs.118/- which obviously, cannot be accepted.

For all these reasons, I find no merit in these writ petitions and they are dismissed *in limine*.

Sd/-

GOPINATH P.

JUDGE

ajt



2024:KER:70722

WP(C) Nos.33109 & 33117 OF 2024

16

APPENDIX OF WP(C) 33117/2024

PETITIONER EXHIBITS

- Exhibit P1** TRUE COPY OF THE AGREEMENT (RELEVANT PAGES)
EXECUTED DATED 27.02.2018
- Exhibit P2** TRUE COPY OF THE CIRCULAR NO. 90/2017/FIN.
DATED 14.12.2017
- Exhibit P3** TRUE COPY OF THE CIRCULAR NO. 18/2019/FIN.
DATED 01.03.2019
- Exhibit P4** TRUE COPY OF THE CIRCULAR NO. D1/60/2024-PWD
DATED 07.05.2024
- Exhibit P5** TRUE COPY OF THE COMMUNICATION DATED
02.08.2024 OF THE PWD
- Exhibit P6** TRUE COPY OF THE STATEMENT COVERING THE
CONTRACT PERIOD DATED NIL
- Exhibit P7** TRUE COPY OF THE RUNNING ACCOUNT BILLS IN
REGARD TO THE CONTRACT
- Exhibit P8** TRUE COPY OF THE PETITIONER'S LETTER DATED
31.08.2024 ISSUED TO THE 2ND RESPONDENT
POINTING OUT THE AMOUNTS DUE ON ACCOUNT OF
THE GST LIABILITY
- Exhibit P9** TRUE COPY OF THE COMMUNICATION DATED
17.04.2024 OF THE COMMISSIONER GST TO THE
ADDITIONAL CHIEF SECRETARY



2024:KER:70722

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17

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