(2018) 05 GAU CK 0252

In the Gauhati High Court

Case No : Civil Writ Petition No. 55 of 2018

Gayatri Projects Ltd APPELLANT

Vs

Union of India Represented RESPONDENT

Date of Decision : 25-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0252

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : Zoramchhana, Linda L. Fambawl

Final Decision : Disposed Off

Judgement

1.Heard Mr. F. Lalengliana, the learned counsel for petitioner as well as Mrs. Linda L. Fambawl, the learned Government Advocate who appears for

the State respondents. With the consent of the parties, the case is taken up for final disposal at the motion stage.

2. The case of the petitioner is that it is a registered company under the Companies Act, 1956 carrying out the trade and business in various

engineering works including road construction amongst others. An agreement was signed by the petitioner with the Chief Engineer, Public Works

Department, PWD Highway for widening to 2-Lane, re-alignment and Geometric Improvement from Km 11.00 to Km 114.618 of National Highway-

44A in the State of Mizoram under Phase â??Aâ?? of SARDP-NE. The agreement was signed on 02.03.2011 (Annexure-C) and thereafter, the

work allotted began to be executed by the petitioner. The modalities for executing the work was laid down by providing various milestones with the

percentage of payments to be made on the agreed terms. The petitioner contends that the existing indirect taxes such as Excise Duty, Service Tax,

Value Added Tax (VAT), etc., came to be replaced by the Goods and Services Tax (GST) w.e.f., 01.07.2017 and the current tax rate for

Government Works is 12% of Gross Receipts and therefore, the petitioner would have to pay the same according to the GST Bills raised on or after

01.07.2017. However, the respondent authority in the Memorandum of Payments prepared on 11.07.2017 only made deductions towards Income Tax

and Mizoram VAT without adding the GST at the rate of 12%. The petitioner, therefore, approached the respondent No. 5 through Communication

dated 19.06.2017 (Annexure-G1) and thereafter, vide Communication dated 05.04.2018 (Annexure-G2) requesting the release of 12% on their Gross

Bills raised after 01.07.2017 and to add and release the GST amount alongwith the bill for upcoming bills. However, as the respondent authority

concerned failed to consider the same and take remedial steps, the petitioner is before this Court.

4. Mr. F. Lalengliana, the learned counsel submits that the prayer of the petitioner at this stage is for a direction to the respondent authority concerned

to dispose of the representation made through the Communication dated 19.06.2017 (Annexure-G) and 05.04.2018 (Annexure-G2) within a time

frame.

5. To this submission, Mrs. Linda L. Fambawl, the learned Government Advocate submits that she has no objection. However, it may be noticed that

the Agreement dated 02.03.2011 was signed between the petitioner and the Chief Engineer, PWD Highway, Mizoram (respondent No. 4) but the

petitionerâ??s grievance was addressed to the Executive Engineer, PWD, National Highway Division-I, Aizawl, Mizoram (respondent No. 5)

through the Communication dated 19.06.2017 and 05.04.201. Although a copy of the Communication dated 05.04.2018 has been marked to the

respondent No. 4, it would have been appropriate for the communication to have been made directly to the respondent No. 4 for consideration.

6. Be that as it may, upon considering the submissions advanced by the learned counsels for the parties and the issue involved, the Writ petition is

disposed of with a direction to the petitioner to submit a fresh and concise representation before the Chief Engineer, PWD (Highway) (respondent No.

4) alongwith a copy of the writ petition within a period of 15 (fifteen) days from

today whereafter, the Chief Engineer, PWD (Highway) shall consider

and dispose the representation submitted within a period of 4 (four) weeks from the date of receipt of the same. The outcome of the representation

shall be communicated to the petitioner.

