

(2023) 04 CHH CK 0036

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 5555, 5562, 5569 Of 2022, 203, 219, 329 Of 2023

M/S Surana And Company

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2023) 04 CHH CK 0036

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Arvind P. Datar, Harsh Wardhan, Tushar Dhar Diwan, Chandresh Shrivastava

Final Decision : Disposed Of

Judgement

1. Since the present batch of writ petitions involve similar question of fact and law as well, they were clubbed together, heard together and are being disposed of by a common order.

2. The present batch of writ petitions have been preferred by the petitioners seeking a declaration that notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended by notification No.03/2022-Central Tax (Rate) dated 13.07.2022 prescribing the rate of GST at 18% for works contract services, be declared inapplicable for the contracts which have been executed prior to 18.07.2022 and further the petitioners be declared entitled for refund of 6% of additional GST paid by them for the contract executed prior to 18.07.2022 from the respondent authorities on submission of valid proof thereof.

3. The petitioners company are involved in construction of road, bridges, tolls etc and were awarded works contracts at the different point of time. The main grievance of the petitioners is against the inaction on the part of the respondent State Authorities in not granting refund/ reimbursement of 6% additional GST

liability imposed upon them w.e.f. 18.07.2022 on the works contract being executed by the petitioners, even though the contract between the parties was signed prior to 18.07.2022 and the tender was submitted and accepted by the respondent authorities with 12% rate of GST liability at the relevant point of time.

4. Learned Senior counsel appearing for the petitioners submits that the actions and inactions on the part of the respondents are wholly unreasonable, illegal, arbitrary and violative of fundamental rights of the petitioners enshrined under Article 14, 19 (1) (g) and 21 of the Constitution of India. The respondents being State are required to act in a just, fair and reasonable manner and to respect the fundamental rights of the petitioners. It is well settled principles of law that no law can be given retrospective operation unless expressly provided. It is highly unjustified, inappropriate, highhanded to apply to the amended GST rate of 18% in respect of concluded contract. It is highly illegal on the part of the respondents to accept execution of work under the contract, which was extended prior to 18.07.2022 on the revised rate of 18%. He further submits that the petitioners and other contractors at the time of submission of their bids submitted their offer/bid on the basis of GST liability @ 12% existing at the time of bid and calculated their bid price on the basis of applicable GST rate of 12%, but in present cases, the increase rate of GST is being made applicable retrospectively despite contracts executed before 18.07.2022 without any refund or reimbursement mechanism, which is impermissible in the eyes of law. Learned Senior counsel further submits that some departments of the Government of Chhattisgarh have already recommended for providing reimbursement to the contractors of the increased GST liability of 6%, but the PWD Department has not issued any order till date for reimbursement of additional GST liability. The Water Resources Department of the State of Chhattisgarh vide notification dated 30.09.2022 has amended the definition of 'new tax' in its contract and has interalia decided that any deviation in the rate of GST after the date of submission of bid would also be treated as 'new tax' and the same would be reimbursed on the proof of such payment of contracts. He further submits that these all writ petitions are squarely covered by the order of this Court dated 17.11.2022 passed in WPT No.94/2020 in between M/s D.A. Enterprises vs State of Chhattisgarh and others, as such these petitions be also decided in light of the aforesaid order and petitioners be directed to make a fresh claim before the respondent authorities. Reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in the matter of Deputy Commissioner of Income Tax vs Pepsi Foods Limited (Now PepsiCo India Holdings Private Limited), reported in (2021) 7 SCC 413.

5. Learned counsel for the respondents strongly oppose prayer made by the petitioners and jointly submit that Clause 7.5 of the contracts categorically states that the rates calculated by the contractor shall be deemed to be inclusive of all taxes, which includes increased or decreased rate of tax, then the prayer sought for by the petitioner is itself frivolous and without any basis and therefore the writ petitions deserve to be dismissed. The reliefs claimed by the petitioners

have no locus to stand on its own and have no legal backing to support it. The stand taken by the petitioners that the State Government vide circular dated 02.08.2018 has decided to reimbursement the amount tax is not at all justified, as the State Government has only decided to reimburse those differential amounts, which have been incurred by the contractor on count of new tax for those contracts which have been executed prior to coming of GST. This circular is not going to help the petitioners for the reason that the petitioners' terms and conditions of contract more specifically Clause 7.2 itself restricts the grant of benefit to any increased or decreased in the rate of tax and until and unless that agreement itself is changed by the Department as well as by the contractor, as such the petitioners are not entitled to any such relief as both the contractors as well as department is bound by the terms and conditions of the contract. Learned counsel further submit that the order passed by this Court in WPT No.94/2020 is not applicable in these cases, because the facts and other conditions are different in these petitions than that of. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matter of United India Insurance Co. Ltd. vs Harchand Rai Chandan Lal, reported in (2004) 8 SCC 644.

6. Heard both the counsel for the parties and perused the material available on record.

7. This Court in the matter of M/s D.A. Enterprises (supra) held in paras 14, 16 & 18 as under:-

"14. It goes without saying that this aspect has been fairly appreciated by the Government itself and had taken a decision of reimbursing the additional tax burden to the Contractors when they had issued Orders for the various Departments under the State Government like: PWD, Chhattisgarh Rural and Development Agency and Chhattisgarh Urban Administration and Development Department and subsequently now vide the order dated 30.09.2022 in the Water Resource Department as well.

16. The action on the part of the respondents in rejecting the claim application also is one, which would be hit by Article 14 of the constitution of India for the reason that in the event of a Contractor having contract with the various Department of the Government, he gets the reimbursement of the additional tax liability from all other Departments except for one, thus it would be arbitrary and discriminatory. If the Government has taken a decision to protect the interest of the Contractor in the light of introduction of new tax law, it ought to have been uniformly made applicable to all the Departments to the State Government and it could not have been made applicable Departments wise without any sufficient cogent reasons. It would have been more reasonable and fair on the part of the State Government, if they would have issued one common Order for all the Department instead of passing orders Department wise taking into consideration the fact that the issue is of Policy matter rather than an individual dispute of a Contractor.

18. This contention of the State Counsel technically may be correct but testing the impugned order upon the ambit of Article 14 or for that matter taking into consideration the fact that the State Government itself practically when for all the other Departments have accepted such a claim of the Contractors where there were certain additional burden incurred by the Contractor in light of introduction of the GST. The Water Resource Department could not have taken a decision on the contrary and the very same Water Resource Department itself now has itself modified the terms of the contract, more particularly clause 2.17.7 whereby the facility for reimbursement of the additional tax burden, in event of new tax being imposed, has been ensured."

8. This Court further directed in para 19 as under:-

"19. The impugned therefore deserves to be and is accordingly set aside / quashed. The petitioner at this juncture is directed to make a fresh claim showing the difference of the tax liability that was incurred at the time of the submission of the bids and the excess tax paid by him in the light of the introduction of the GST. Upon such claim being made, the respondents shall forthwith process the same and the petitioner be suitably reimbursed after due scrutiny and enquiry necessary in-respect-of the additional tax burden incurred by the petitioner."

9. The documents submitted by the petitioners in the present writ petitions postulate that some of the departments of the State Government of Chhattisgarh have accepted such claim of the contractors where certain additional burden of money was incurred upon them after coming into force of the GST. In the similar nature of case, this Court vide order dated 17.11.2022 passed in WPT No.94/2020 directed the petitioner therein to make a fresh claim showing the difference of tax liability that was incurred at the time of submission of bids and the excess tax paid by him in the light of the introduction of the GST and upon such claim being made, the respondents were directed to forthwith process the same and after due scrutiny and enquiry, the petitioner therein be suitably reimbursed the additional tax burden incurred by him. Thus, keeping in view the fact that present cases are not distinguishable to that of passed in WPT No.94/2020, it would be just and expedient in the interest of justice to direct the petitioners herein as well to follow the process, as has been directed/observed in the aforesaid writ petition. Accordingly, it is directed that the petitioners shall make a fresh claim before the respondent authorities agitating their grievance and upon such claim being made, the respondent authorities shall proceed ahead with the necessary scrutiny and enquiry and thereafter if the petitioners are found entitled to be reimbursed the additional tax liability incurred upon them, they will suitably be reimbursed. Let the whole exercise be done within a period of 4 months from the date the petitioners make a fresh claim before the respondent authorities apropos additional tax liability.

10. All the writ petitions stand disposed of. No order as to cost (s).