

02. 19.12.2018

Heard learned counsel for the parties.

By way of this writ petition, petitioner has challenged action of the opposite parties in not reimbursing the differential tax amount arising out of change in tax regime from Value Added Tax (VAT) to Goods and Service Tax (GST) with effect from 01.07.2017 and has also prayed to quash Clause 1(iii) of the Finance Department Memorandum dated 07.12.2017.

Batch of writ petitions are being filed on this issue. The main issue involved in such matters is that the difficulty faced by the contractors due to change in the regime regarding works contract under GST. The grievance of the petitioner is that in view of the introduction of the GST, petitioner is required to pay tax which was not envisaged while entering into the agreement.

Learned Addl. Government Advocate submits that the Government has now come out with a revised guidelines in this respect in supersession of the guidelines issued vide Finance Department letter dated 07.12.2017. He files an Additional Counter Affidavit of O.P. No.2 annexing the revised guidelines relating to works contract under GST issued by the Government of Odisha, Finance Department vide Office memorandum No. FIN-CTI-TAX-0045-2017/38535/F Dated 10.12.2018, which reads as under:

“Sub: Revised guidelines relating to works contract under GST.

The guidelines regarding works contract under GST was issued vide Finance Department letter No. FIN-CTI-TAX-0045-2017-36116/F dated 07.12.2017. Subsequently, the National Rural Infrastructure Development Agency (NRIDA), Ministry of Rural Development, Government of India have issued guidelines for works contract on implementation of Goods and Services Tax. Several representations have been received

from the contractors claiming additional amount towards GST in respect of the works put to tender prior to 01.07.2017 but executed either partly or wholly after 01.07.2017.

On careful consideration of the representation of the contractors vis-à-vis existing guidelines issued in the matter, Government have been pleased to issue following revised guidelines in supersession of the guidelines issued vide Finance Department letter dated 07.12.2017.

1. The Goods and Services Tax (GST) has come into force w.e.f. 1st July, 2017 by subsuming various indirect taxes such as Excise Duty, VAT, CST, Entry Tax, Service Tax etc. Works contract is treated as composite supply of service under GST and are taxable @18%, 12% or 5% depending on the nature of works contract. In order to comply the provisions of GST relating to works contract the State Government have revised the Schedule of Rates – 2014 (SoR-2014) vide Works Department OM No. 13827/WD dated 16.09.2017 w.e.f. 01.07.2017. While the item rates in the SoR-2014 were inclusive of all taxes i.e. Excise Duty, VAT, Entry Tax, Service Tax etc., the same has been excluded in the Revised SoR-2014. Therefore, while preparing estimates for a work after 01.07.2017, the GST exclusive work value is to be arrived at as per the revised SoR-2014 and then GST will be added at the appropriate rate.
2. In GST regime, the works contractor is required to raise Tax Invoice clearly showing the taxable work value and GST (CGST+SGST) separately.
3. In case of work, where the tender was invited before 01.07.2017 on the basis of SoR-2014, but payments made for balance work or full work after implementation of GST, the following procedure shall be followed to determine the amount payable to the works contractor;
 - (i) Item-wise quantity of work done after 30.06.2017 (i.e. the Balance Work) and its work value as per the original agreement basing on the pre-revised SoR-2014 is to be ascertained first.
 - (ii) The revised estimated work value for the Balance Work is to be determined as per the Revised SoR-2014. (In case of rates of any goods or service used in execution of the balance Work not covered in the Revised SoR-2014, the tax-exclusive basic value of that goods or service shall be determined by removing the embedded tax incidences of VAT, Entry Tax, Excise Duty, Service Tax, etc. from the estimated Price/Quoted Price.)

- (iii) *The revised estimated work value for the Balance Work shall then be enhanced or reduced in the same proportion as that of the tender premium/discount.*
 - (iv) *Finally, the applicable GST rate (5%, 12%, or 18% as the case may be) is to be added on the revised estimated work value for the Balance Work to arrive at the GST-inclusive work value for the Balance Work.*
 - (v) *A model format for calculation of the GST-inclusive work value for the Balance Work is attached as Annexure. The competent authority responsible for making payment to the works contractor will determine GST inclusive work value for the Balance Work for which agreement executed on the basis of SoR-2014.*
 - (vi) *A supplementary agreement shall be signed with the works contractor for the revised GST-inclusive work value for the Balance Work as determined above.*
 - (vii) *In case the revised GST-inclusive work value for the Balance Work is more than the original agreement work value for the Balance Work, the works contractor is to be reimbursed for the excess amount.*
 - (viii) *In case the revised GST-inclusive work value for the Balance Work is less than the original agreement work value for the Balance Work, the payment to the works contractor is to be reduced accordingly. In case excess payment has already been made to the works contractor in pursuance of the original agreement, the excess amount paid must be recovered from the works contractor.*
 - (ix) *These procedures shall be applicable to all works contract including those executed in EPC/Turn-key/Lumpsum mode.*
4. *In case of F2 contracts, the taxable value under GST for each item of the balance work is to be determined by the competent authority applying the premium/discount offered by the works contractor on respective item.*
- The Administrative Departments should issue suitable instructions to the Competent Authority responsible for making payments to the works contractors to implement this revised guidelines.”*

In that view of the matter, petitioner shall make a comprehensive representation before the appropriate authority within four weeks from today ventilating the grievance. If such a representation is filed, the authority will consider and dispose of the same, in the light of the aforesaid revised guidelines dated 10.12.2018 issued by the Finance Department, Government of Odisha, as expeditiously as possible, preferably by 31.03.2019.

If the petitioner(s) will be aggrieved by the decision of the authority, it will be open for the petitioner(s) to challenge the same.

No coercive action shall be taken against the petitioner till 31.03.2019.

The writ petition is disposed of accordingly.

Misc. Cases, if any, connected to this writ petition are also disposed of.

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(**K.S. Jhaveri**)
Chief Justice

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(**K.R. Mohapatra**)
Judge