

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

34 21.09.2023
Ct. no. 2
SK

WPA/751/2023

BISWAJIT BISWAS
VS
ASSISTANT COMMISSIONER OF
REVENUE BUREAU OF
INVESTIGATION (BOI) AND ORS

Mr. Jagriti Mishra
Mr. Rishab Kumar
Ms. M. Das

...for the petitioner

Mr. B. Ghosh
Mr. Subir Kr. Saha
Mr. M. Rahman

...for the state

It is submitted on behalf of the respondent Authorities that during the pendency of the writ petition, a final order has been passed on 18 September, 2023 under Section 73(5) read with Section 74(5) of the WBGST Act, 2017 and the relevant Rules framed thereunder. A copy of such order is also supplied to the petitioner.

The challenge in this writ petition pertains to a contract executed by the petitioner for the WBSRDA, a State Government undertaking.

It is submitted on behalf of the petitioner that the underlying contract by and between the petitioner and the WBSRDA did not provide for

payment of any GST. Such claim has been unilaterally imposed on the petitioner unconscionably and without authority of law. In the absence of the WBSRDA having made any payment, there is no question of the petitioner being permitted to pay the demand of GST. In this connection, the petitioner relies on a Notification dated 6 June, 2018 issued by the National Rural Infrastructure Development Agencies, inter alia, providing as follows;

viii. Once the value of work sanction and GST taxes are arrived, the employer may enter into supplemental agreement with revised agreement value that will be original contracted value minus the value of subsumed tax arrived as above plus GST of 12% i.e., the cost of the subsumed taxes factored in the original contract value is required to be deducted from the original contract price to arrive at the actual amount of "cost of the project".

xi. The contractor while raising their bill and tax invoice post-GST, will now collect GST as indicated above from the employer and will remit the same to the respective Government. The entire GST of the supply will have to be finality borne by the employer.

It is submitted on behalf of the respondent authorities that despite the aforesaid Notification, no supplemental agreement had been entered into by and between the petitioner and the WBSRDA. The fact that any claim which could be sought on account of GST dues from the petitioner in the absence of the WBSRDA is a question which is to be adjudicated by the Appellate Authority.

In this background, the petitioner contends that without any corresponding payment by the WBSRDA, there is no question of the petitioner being asked to pay GST dues.

In view of the subsequent events which have transpired after the filing of the writ petition and more particularly in view of the final order dated 18 September, 2023, the instant writ petition has become infructuous.

The petitioner has an efficacious statutory remedy against the order dated 18 September, 2023 by way of preferring a statutory appeal.

It is made clear that there is no adjudication on the merits of the case and all questions are left to be decided by the Appellate Authority.

With the aforesaid direction, WPA/751/2023 stands disposed of.

Mr. Ghosh has been requested to appear for the respondent authorities. The services of Mr. Ghosh be regularized by the Appropriate Authority.

(Ravi Krishan Kapur, J.)