

20.09.2023

Sl no. 7

Ct no. 2

P.M.

WPA 22070 OF 2023

Hriday Kumar Das.

- Vs -

The State of West Bengal & Ors.

Mr. Himangshu Kumar Ray,
Ms. Shiwani Shaw

... for the petitioner

Mr. Sayan Sinha

... for respondent No. 5, 6 and 7

Mr. Anirban Ray, Ld. Govt. Pleader

Md. T. M. Siddiqui,

Mr. T. Chakraborty,

Mr. S. Sanyal

... for the State

Affidavit-of-service filed in court be kept with
the record.

Heard learned Counsel appearing for the
parties.

This writ petition has been filed for the relief by
way of direction upon the respondents authority
concerned to bear the additional tax liability for
execution of subsisting Government contracts either
awarded in the pre-GST regime or in the post GST
regime without updating the Schedule of Rates (SOR)
incorporating the applicable GST while preparing Bill
of Quantities (BOQ) for inviting the bids. The
petitioner has also prayed for relief of issuance of
direction upon the respondents authority concerned
to neutralize the impact of unforeseen additional tax
burden on Government contracts since the

introduction of GST w.e.f. 1st July, 2017 for ongoing contract awarded before the said date and to update the State SOR incorporating applicable GST in lieu of inapplicable West Bengal VAT henceforth.

Considering the submissions of the parties this writ petition is disposed of by giving liberty to the petitioner to file appropriate representation in the aforesaid regard as referred in preceding paragraph of this order, before the Additional Chief Secretary, Finance Department, Government of West Bengal within four weeks from date. On receipt of such representation the Additional Chief Secretary, Finance Department shall take a final decision within four months from the date of receipt of such representation after consulting with all other relevant departments concerned.

Needless to mention that such representation shall be considered and final decision will be taken up by the Additional Secretary, after giving opportunity of hearing to the petitioner or his authorized representatives. Till the final decision is taken by the Additional Chief Secretary, no coercive action shall be taken against the petitioner. In case of default in making representation within the time stipulated herein this order will not have any force.

It is also recorded that the Additional Chief Secretary, while taking decision on the representation to be filed by the petitioner shall act in accordance with law and pass a reasoned and speaking order on merit and after considering all the judgements of different High Courts upon which petitioners intend to rely.

By this writ petition petitioner has also challenged the impugned order dated 31st May, 2023 passed by the appellate authority concerned under the WBGST Act. Though the aforesaid impugned order is appellable order under the statute before the Tribunal but since the said forum is not available at present this writ petition is being entertained and I am of the view that the issues involved in this writ petition cannot be adjudicated without calling for affidavits from the respondents.

Let the respondents file affidavit-in-opposition within four weeks, petitioner to file reply thereto, if any, within two weeks thereafter.

There shall be no coercive steps for recovery of the demand in question arising out of the impugned order of the appellate authority concerned if petitioner deposits further 20% of the disputed amount of tax within a period of ten days from date.

In case of failure on the part of the petitioner to make the aforesaid deposit within the time stipulated herein this interim order shall not have any force and the respondent authority concerned will be free to proceed in accordance with law.

List this matter for final hearing in the monthly list of December, 2023.

At the time of hearing, parties should be ready with the short written notes of arguments.

(Md. Nizamuddin, J.)