IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 15TH DAY OF OCTOBER 2025 / 23RD ASWINA, 1947

WP(C) NO. 37299 OF 2024

PETITIONER:

M/S. SHREE CONTRACTOR,
1270/32, DADA BHAI COLONY, AJMER, RAJASTHAN,
REPRESENTED BY ITS AUTHORIZED SIGNATORY,
SHRI. VIKRAM SINGH RAWAT, PIN - 305001

BY ADVS.
SMTG.MINI(1748)
SHRI.A.KUMAR (SR.)
SHRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD
SHRI.BALASUBRAMANIAM R.

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF TAXES, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

2 SUPERINTENDING ENGINEER,
KERALA WATER AUTHORITY,PUBLIC HEALTH CIRCLE,
KOLLAM, PIN - 695001

3 EXECUTIVE ENGINEER,
PROJECT DIVISION, KERALA WATER AUTHORITY,
KOLLAM, PIN - 695001

BY ADVS.
SHRI.P.M.JOHNY
SRI.JUSTINE JACOB, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The Petitioner is a partnership firm and is engaged in the construction work including the works for the Government Departments. The petitioner was entrusted with the work at the instance of the Kerala Water Authority, namely, "KIIFB- Augmentation of WSS to Kollam Corporation- Phase II- Package III- Supplying, laying, commissioning and maintaining 1016 mm diameter 8.8 mm thick MS Clear Water Pumping Main from Treatment Plant at Vasoorichira to OHSR at Manichithodu, 914 mm diameter 8.0 mm thick MS Clear Water Gravity Main from Manichithodu to Anandvalleeswaram and construction of 16 Mtr Staging 54LL OHSR at

Manichithodu". Ext.P1 is the agreement entered into in this regard. The petitioner completed the work on 31.03.2023. However, according to the petitioner, the differential amount receivable by the petitioner towards the increase in the rate of GST was not paid by the respondents, despite the fact that they are under the contractual obligation to pay the same. Besides, the security deposit furnished by the petitioner was also not released. This writ petition is submitted by the petitioner in such circumstances seeking the following reliefs:

> "**A.** *Issue a Writ of Mandamus or such other appropriate writ, order or direction directing the 3rd respondent to pay a sum of Rs.65,58,361/- (Rupees Sixty five lakhs fifty eight thousand three hundred and sixty one only) towards the differential rate of GST due on the Bills and also release the*

sum of Rs.1,71,42,000/- (Rupees One Crore seventy one lakhs forty two thousand only four) held as security deposit and the retained amount of Rs.32,62,888/- (Rupees Thirty two lakhs sixty two thousand eight hundred eighty eight only) under the head operation and maintenance.

B. *Issue a Writ of Mandamus or such other appropriate writ, order or direction directing the respondents to pay interest on the amounts due @ 10% p.a. from 31.03.2023 (date of completion) till the date of payment.*

C. *Pass such other appropriate writ, order or direction as this Hon'ble Court may deem just and fit in the circumstances of the case."*

2. In the writ petition, it is specifically averred by the petitioner, with specific reference to Clause 8.15.2 in agreement that, any excess in taxes and duties within the original contract period, shall be borne by the authority.

Thus, it was contended that, the petitioner is entitled to get the differential amount in GST, as the rate of GST was increased during the execution of contract from 12% to 18%.

3. A statement has been submitted by the learned Standing Counsel for the respondents 2 and 3, in which the contentions raised by the petitioner are denied and the reliefs sought are opposed. According to the respondents, based on Annexure R2(a) circular, the GST applicable to the works were revised from 12% to 18% with effect from 18.07.2022 and therefore, all the works completed and invoices generated before 18.07.2022 will be only 5% and not 12.%. According to the respondents,

major part of the petitioner's bills were generated prior to 18.07.2022 and all the bills were already paid. With regard to the release of the security deposit, it is contended that, since the major work undertaken by the petitioner included laying of pipeline, a different completion date is contemplated therein, subject to the completion of the project as such. Therefore, the same also cannot be released at this point of time.

4. I have heard learned Counsel for the petitioner and the learned Standing Counsel for the respondents 2 and 3.

5. The first question to be considered is with regard to the differential rate of GST payable to the

petitioner. As rightly pointed out by the learned Counsel for the petitioner, Clause 8.15.2, of the contract, deals with the payment of GST and the same reads as follows:

> *"The lump sum amount quoted shall be inclusive of GST which may be paid or become payable on the completed work within the scope of the tender. In other words, the amount quoted shall be inclusive of GST prevailing as on the due date of tender and taxes at applicable taxes shall be deducted from the payments to the contractor as per the rules without further correspondence. The deductions from the contractors payment shall include Income Tax, Labour Welfare Fund and GST as per the rate in force. However this shall not mean that only this amount can be deducted.* ***Any excess in taxes and duties within the original contract period shall be borne by the authority*** *and any reduction in taxes and duties within the period shall be deducted from the contractors bill, on proof of remittance."*

It is evident from the said Clause that, any excess in taxes and duties within the original contract period shall be borne by the authority. The expression "authority" refers to the respondents 2 and 3 herein. The specific case of the petitioner is that, the petitioner had to pay GST amount @ 18% for the amounts received from the respondents 2 and 3 and therefore, the petitioner is entitled to get the same reimbursed. Going by the terms and conditions in the contract, as referred to above, the petitioner is entitled to differential rate of tax, which the petitioner had paid on account of the revision of tax during the execution of the work. It is an admitted position that at the time of execution of contract the rate was only 5% and the increase took place during the execution of the work. Thus, the petitioner is entitled to differential amount of tax as per the said Clause. However, the specific objection raised by the learned Standing Counsel for the respondents 2 and 3 is by placing reliance upon Annexure R2(a) Circular which says that, in respect of the Government contracts, the GST was increased to 18% with effect from 18.07.2022 onwards and therefore, the question relevant is whether the works pertaining to which GST is demanded were completed prior to 18.07.2022 onwards. This is a matter to be examined. The specific contention of the petitioner is by placing reliance upon Ext.P10 show cause notice issued by Department of GST, requiring the petitioner to pay tax @18% for the works done. It is also reported that, the finalization of Ext.P10 has not been done so far.

6. Thus, in the light of the terms and conditions in the contract, and the liability of the petitioner to pay the tax @18%, it is to be held that, if the petitioner was found liable to pay tax at the rate of @18% pertaining to the transactions relating to the contract in question, under no circumstances, the petitioner could be denied the reimbursement of the aforesaid payment. Therefore, as far as the said issue concerned, it is to be held that, in case the petitioner produces records to show that the petitioner had paid the tax @18% in respect of the works carried out concerning the contract entered into between the petitioner and the respondents, the petitioner shall be granted reimbursement of the amount.

7. When coming to the next question, that is relating to the release of the security deposit and other amounts, the crucial aspect to be noticed is the date of completion as per the terms and conditions in the contract. Clause 8.14.1 of Ext.P1 agreement, deals with the issuance of completion certificate which reads as follows:

> *"8.14.1. On the grant of completion certificate to the contractor by the Engineer in charge of the work and within one month of the commencement of the maintenance period, 5% of contract value out of the total 8% of the security deposit shall be refunded to the contractor. Balance 3% of the security deposit will be released on completion of full guarantee period of 12 months.*
>
> *For pipe laying works alone, the work will be*

treated as "completed" when it is ready for commissioning of all allied civil works with anchor blocks and thrust blocks including fitting of all valves, specials etc. without any gap closing works in the pipe line alignment and after completion of testing of pipe line laid. The completion certificate will be issued by the concerned Assistant Executive Engineer in charge of the work within one month. Security deposit will be released as per the modified NIT conditions on the grant of completion certificate as specified above."

On going through the same, it can be seen that, as far as the work relating to pipeline is concerned, the work will be treated as completed when it is ready for commissioning of all allied civil works with anchor blocks and thrust blocks including fitting of all valves, specials etc. without any gap closing works in the pipe line alignment and after completion of testing of pipe line laid. Thus, a distinction has been drawn, going by the terms of contract, in relation to the work of pipeline. Admittedly, the major work carried out by the petitioner is that of pipeline and therefore, in the light of the aforesaid Clause, a different date of completion is contemplated. As per the terms and conditions, 5% of the contract value, out of total of 8% of the security deposit has to be refunded to the contractor, within one month of the commencement of maintenance period and the balance 3% of the security deposit will be released on completion of full guarantee period of 12 months. Thus, going by the said terms, the petitioner must get the 5% as referred to above at the time of commencement of the maintenance period. According to the petitioner, even though the same is released, it was on a bank guarantee furnished by the petitioner. As far as the 3% is concerned, the same has not been released so far.

8. However, on carefully going through the statutory provisions, it can be seen that, as far as the release of 3% referred to above is concerned, the same can only be released, upon completion of the work as referred to in Clause 8.14.1, which is different from the completion of the work at the instance of the petitioner. It is deemed to have been completed on completion of the project as such. In such circumstances, the question as to

whether the stage referred to in Clause 8.14.1 for the purpose of release of the security deposit is reached, is a matter to be considered by the competent authority under the respondents.

9. In such circumstances, it is ordered that, in case the petitioner submits a request highlighting the details of the work, seeking release of the security deposit, the same shall be considered by the 2nd respondent and appropriate orders thereon shall be passed, by specifically examining the question as to whether the stage referred to in Clause 8.14.1 has reached, to enable the petitioner to get the amount released. It is further directed that, since no terms and conditions enabling the

respondents to insist for a Bank Guarantee, for releasing 5% of the contract value as referred to in the above clause is brought to the notice of this Court, I am of the view that, in case there are no contractual obligations upon the petitioner to furnish such Bank Guarantee, the same also cannot be sustained. Therefore, the petitioner can highlight this aspect in the representation. This shall be considered by the 2nd respondent and in case, there are no terms and conditions enabling the respondents to insist for a Bank Guarantee for release of the said amount, the petitioner shall be relieved of the obligation to furnish the Bank Guarantee.

Thus, this writ petition is disposed of with the aforesaid findings and directions which are summarized hereunder:

(i) The respondents 2 and 3 shall ensure that the differential amounts of tax receivable by the petitioner are released to the petitioner, upon the petitioner furnishing necessary evidence showing the payment of higher rate of tax, pertaining to the works carried out by the petitioner in relation to the contract in question. Same shall be released within three months from the date of receipt of a copy of this judgment.

(ii) With regard to the release of the security deposit, it is ordered that, upon the petitioner furnishing a representation as referred to above, the same shall be considered by the 2nd respondent, subject to the observations made by this Court in this judgment and appropriate orders shall be passed, within a period of three months from the date of receipt of a copy of this judgment, after giving the petitioner an opportunity for being heard.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

scs

APPENDIX OF WP(C) 37299/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE AGREEMENT NO. 14/2019-20 OF SE/Q FOR WORKS CONTRACT DATED 30.08.2019 (RELEVANT PAGES OF THE CONTRACT)
Exhibit P2	TRUE COPY OF THE NOTIFICATION NO.15/2021-CENTRAL TAX (RATE) DATED 18.11.2021
Exhibit P3	TRUE COPY OF THE NOTIFICATION NO.22/2021-CENTRAL TAX (RATE) DATED 31.12.2021
Exhibit P4	TRUE COPY OF THE PRESS RELEASE DATED 31.12.2021
Exhibit P4A	TRUE ENGLISH TRANSLATION OF EXHIBIT P4 PRESS RELEASE DATED 31.12.2021
Exhibit P5	TRUE COPY OF THE VOUCHER DATED 04.01.2022
Exhibit P6	TRUE COPY OF THE VOUCHER DATED 15.02.2022
Exhibit P7	TRUE COPY OF THE VOUCHER DATED 26.05.2022
Exhibit P8	TRUE COPY OF THE VOUCHER DATED 17.08.2022
Exhibit P9	TRUE COPY OF THE VOUCHER DATED 30.12.2022
Exhibit P10	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 19.10.2023
Exhibit P11	TRUE COPY OF THE JUDGMENT IN WRIT PETITION © NO.16479/2022 DATED 04.07.2022
Exhibit P12	TRUE COPY OF THE COMMUNICATION DATED 8.7.2024

RESPONDENT ANNEXURES

Annexure-R2(a)	**True copy of the Circular No. 79/2022/Fin., dated 15/9/2022 of ACS (Finance) of Government of Kerala, Finance (Industries and Public Works-B) Department, Government of Kerala.**
Annexure-R2(b)	**True copy of the Circular No.0023/2011/DYAM/FIN/KWA, dated 22/9/2022 was issued by Finance Manager and Chief Accounts Officer, KWA, Thiruvananthapuram.**
Annexure-R2(c)	**True copy of the audit observation reference : 4(OBS-1169315), dated 9/1/2024, issued by Principal Accountant General (Audit-1), Kerala.**