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IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 9TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 145682 OF 2020 (T-RES)

BETWEEN:

M/S.N.R. KULKARNI NRK CONSTRUCTION COMPANY
A PARTNERSHIP FIRM REGISTERED UNDER THE
PROVISIONS OF THE PARTNERSHIP ACT,1932,
HAVING ITS REGISTERED OFFICE AT,
"SHRI LAKSHMI NIVAS",
8TH CROSS,
VIDYAGIRI,
BAGALKOT-587102,
REPRESENTED BY ITS PARTNER MR.NARAYAN
R.KULKARNI.
AGE:58 YEARS, OCC:PARTNER,
R/O. "SHRI LAKSHMI NIVAS",
8TH CROSS, VIDYAGIRI,
BAGALKOT 587102

...PETITIONER

(BY SRI. SHIVRAJ S BALLOLI, ADVOCATE)

AND:

1. THE UNION OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
ROOM NO.26,
NORTH BLOCK,
NEW DELHI-110001,
REPRESENTED BY IT JOINT SECRETARY.
2. THE STATE OF KARNATAKA
DEPARTMENT OF FINANCE,
VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BENGALURU-560001,





REPRESENTED BY ITS PRINCIPAL SECRETARY.

3. THE STATE OF KARNATAKA
COMMERCIAL TAXES DEPARTMENT
GOODS AND SERVICE TAX (GST),
VANIJA TERIGE KARYALAYA,
1ST MAIN ROAD,
GANDHI NAGAR,
BENGALURU-560001.
4. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
LGSTO-325,
NAVANAGAR,
HUBBALLI-580025,
TQ: HUBBALLI,
DIST: DHARWAD.
5. KARNATAKA NEERAVARI NIGAM LIMITED
(A GOVERNMENT OF KARNATAKA UNDERTAKING),
4TH FLOOR,
COFFE BOARD BUILDING,
NO.1,
DR.B.R.AMBEDKAR VEEDHI,
BENGALURU-560001.
REPRESENTED BY ITS MANAGING DIRECTOR.
6. THE EXECUTIVE ENGINEER
KARNATAKA NEERAVARI NIGAM LIMITED,
JLBC DIVISION NO.2,
JHAMKHANDI, TQ:JHAMKHANDI 587301
DIST:BAGALKOT.
7. THE EXECUTIVE ENGINEER
KARNATAKA NEERAVARI NIGAM LIMITED,
JLBC DIVISION,
BILAGI, TQ:BILAGI 587116
DIST:BAGALKOT
8. THE EXECUTIVE ENGINEER
KARNATAKA NEERAVARI NIGAM LIMITED,
MLBCC DIVISION,
BADAMI, TQ:BADAMI 587201
DIST:BAGALKOT



9. THE EXECUTIVE ENGINEER
KARNATAKA NEERAVARI NIGAM LIMITED,
HBC DIVISION,
ATHANI, TQ:ATHANI 591304
DIST:BELAGAVI
10. THE EXECUTIVE ENGINEER,
KARNATAKA NEERAVARI NIGAM LIMITED,
MALAPRABHA AND GHATAPRAPHA PROJECTS,
DIVISION NO.1,
NARAGUND, TQ:NARAGUND 582201,
DIST:GADAG.
11. THE EXECUTIVE ENGINEER,
KARNATAKA NEERAVARI NIGAM LIMITED,
JRBC DIVISION NO.5,
KOUJALGI, TQ:GOKAK 591227
DIST:BELAGAVI
12. THE PRINCIPAL SECRETARY
RURAL DEVELOPMENT AND PANCHAYATH RAJ
DEPARTMENT,
GOVERNMENT OF KARNATAKA,
M.S.BUILDING,
AMBEDKAR VEEDHI,
BENGALURU-560001,
REPRESENT BY ITS PRINCIPAL SECRETARY.
13. THE ZILLA PANCHAYATH
RAICHUR NEAR DISTRICT,
COURT COMPLEX,
HYDERABAD ROAD,
RAICHUR-584101,
TQ AND DIST: RAICHUR,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.
14. THE EXECUTIVE ENGINEER,
PANCHAYATH RAJ ENGINEERING DEPARTMENT,
THE ZILLA PANCHAYATH, RAICHUR
NEAR DISTRICT COURT COMPLEX,
HYDERABAD ROAD, RAICHUR 584101,
TQ AND DIST:RAICHUR
15. THE ZILLA PANCHAYATH



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BAGALKOT DISTRICT ADMINISTRATIVE BUILDING,
NAVANAGAR,
BAGALKOT-587101,
TQ AND DIST: BAGALKOT,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

16. THE EXECUTIVE ENGINEER
PANCHAYATH RAJ ENGINEERING DEPARTMENT,
THE ZILLA PANCHAYATH, BAGALKOT,
DISTRICT ADMINISTRATIVE BUILDING,
NAVANAGAR, BAGALKOT 587101
TQ AND DIST: BAGALKOT
17. PRINCIPAL SECRETARY
PUBLIC WORKS PORTS AND INLAND WATER TRANSPORT
DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIKASA SOUDHA,
M.S.BUILDING,
AMBEDKAR VEEDHI,
BENGALURU-560001.
18. THE EXECUTIVE ENGINEER
PUBLIC WORKS, PORTS AND INLAND WATER
TRANSPORT DEPARTMENT,
RAICHUR 584101
19. THE EXECUTIVE ENGINEER,
PUBLIC WORKS, PORTS AND INLAND
WATER TRANSPORT DEPARTMENT,
BAGALKOT 587101
20. THE KRISHNA BHAGYA JAL NIGAM LIMITED
PWD OFFICE,
ANNEX BUILDING,
III FLOOR,
KR CIRCLE,
BENGALURU-560001,
REPRESENTED BY ITS MANAGING DIRECTOR.
21. THE EXECUTIVE ENGINEER,
THE KRISHNA BHAGYA JAL NIGAM LIMITED,
ARBC DIVISION, HUNAGUND,
TQ: HUNAGUND 587118



DIST:BAGALKOT

22. THE KARNATAKA RURAL ROAD DEVELOPMENT AGENCY
A SOCIETY REGISTERED UNDER THE KARNATAKA
SOCIETIES REGISTRATION ACT,
HAVING ITS REGISTERED OFFICE AT: III FLOOR,
M.S.BUILDING,
AMBEDKAR VEEDHI,
BENGALURU-560001,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.
23. THE EXECUTIVE ENGINEER,
THE KARNATAKA RURAL ROAD
DEVELOPMENT AGENCY,
RAICHUR 584101

...RESPONDENTS

(BY SRI. T.HANUMAREDDY, AGA FOR R2 TO R4, R12, R17 TO R19,
SRI. S.M. KALWAD, ADV. FOR R5 TO R11,
SRI. M.M. PATIL, ADV. FOR R13,
SRI. R.M. KULKARNI, ADV. FOR R20 TO R21,
SRI. BUSHAN B. KULKARNI, ADV. FOR R15 AND R16,
R14, R21, R22, R23 ARE SERVED,
WP IS DISMISSED AGAINST R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF
MANDAMUS DIRECTING THE RESPONDENTS NO.5 TO 23 TO THE
PETITIONER A SUM OF RS.3,34,62,072.50/- (RUPEES THREE CRORES
THIRTY-FOUR LAKHS SIXTY-TWO THOUSAND AND SEVENTY-TWO AND
PAISE FIFTY ONLY) TOWARDS THE APPLICABLE GST PAYABLE BY THE
RESPONDENT AUTHORITIES AS DETAILED BY THE PETITIONER IN
REPRESENTATIONS DATED 26.12.2019 VIDE ANNEXURE-D TO D17
ALONG WITH THE ACCRUED INTEREST AND PENALTY IF ANY AND ETC.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE M.NAGAPRASANNA)

1. The petitioner is before this Court seeking the following prayer.

- i. Issue a writ of mandamus directing the respondents No.5 to 23 to the petitioner a sum of Rs.3,34,62,072.50/- (Rupees three crores thirty-four lakhs sixty-two thousand and seventy-two and paise fifty only) towards the applicable GST payable by the respondent authorities as detailed by the petitioner in representations dated 26.12.2019 vide Annexure-D to D17 along with the accrued interest and penalty if any.
- ii. Issue a writ of mandamus directing the respondents No.5 to 23 to the petitioner a sum of Rs.43,34,555/- (Rupees forty three lakhs thirty four thousand five hundred and fifty five only) towards the applicable vat payable by the respondent authorities as per the assessment order passed by respondent no.4 dated 12.11.2019 bearing No.DCCT/Audit-1/HBL/19-20/B vide Annexure-B and the accrued interest and penalty if any.
- iii. Issue a writ of mandamus directing respondent No.4 from exempting the petitioner from either filing the monthly GST returns or paying the applicable GST thereon pending payment from the concerned authorities as per the representation dated 26.12.2019 vide Annexure-F.
- iv. Issue a writ of mandmaus directing respondent No.4 to no to take any precipitative actions against the petitioners pending receipt of payment from respondent No.5 to 23 authorities pursuant to the assessment order passed by respondent No.4 dated 12.11.2019 bearing No.DCCT/Audit-1/HBL/19-20/b vide Annexure-B.



V. Pass any other orders as this Hon'ble Court may deem fit in the interests of justice and equity."

2. The prayer of the petitioners sought is akin to what is decided by the Co-ordinate Bench of this Court in Writ Petition No.9721 of 2019 and connected cases disposed on 11.04.2023.

The Co-ordinate Bench has held as follows:

"11. It is an undisputed fact that the Petitioners herein are class-I contractors who have entered into 'works contract' with various State Govt agencies and that the agreements were entered into at a point of time when the KVAT Act and Finance Act 1994 were in force. It is also not in dispute that the Petitioners are either covered under Composition scheme or regular VAT assessment and that on 01.07.2017 when the GST Act was implemented pan India, the said works contract was treated as "deemed service" and the Petitioners became liable to pay GST. It is this differential tax amount arising out of change in tax regime from VAT to GST which cast an additional tax burden on the Petitioners, which is the subject matter of the present petitions.

12. Before advertng to the rival contentions, it is necessary to refer to the State Government Circular dated 03.01.2020, which reads as under:-

"With reference to the above, your request for clarification on Tax calculation for the pre- GST period and post-GST period in the running bills of works has been examined by the GM (PF), KUIDFC and has suggested the following procedure for calculating Taxes for pre-GST period and post-CST period as follows:

1. Calculate the balance works to be completed in the original contract.

2. Derive the rate of materials, KVAT items required to complete the balance works.



3. Deduct the "KVAT" amount from those materials and the service tax also.

4. Add the applicable "GST" on those items.

5. Input Credit on the materials is to be arrived at and to be set at against the output GST (Billed to the Smart City) In this regard, a copy of the detailed report submitted by the Consultants M/s.S.R.& M.R. Associated, Chartered Accountants to KUIDFC on goods & service tax matters is enclosed herewith for your reference and further action in the matter."

13. Subsequently, the State Government issued one more Circular dated 14.12.2020, which reads as under :-

No: ED/212/FC2/2020

Finance Department (PC-2) KWB/ CAO/ AS2/ AMRUT/
GST/ 2020-21

Dated:14.12.2020

The proposal of the Administrative Department has been examined. Finance Department opines as follows:

"Karnataka Urban Water Supply & Sewerage Board, Bangalore has sought clarification on GST calculation for works contract wherein agreements were executed prior to 01.07.2017 at old schedule rate., Generally the turnover related to the supply of goods or services or both effected before 01.07.2017 (appointed date of implementation of GST) should be taxed under the provisions of the earlier laws and not GST laws. Hence the portion of the contracts which are already executed earlier to 01.07.2017 must be taxed under the erstwhile Karnataka Value Added Tax Act and the Service Tax Act. This turnover, in addition to the certified works, also must include the turnover related to the uncertified works which are already executed but yet to be certified. Only that portion of the contract which are executed after the implementation of the GST, i.e., after 01.07.2017 are liable to tax under the GST Act.



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In case where the works contractor has in stock, materials which are purchased before 01.07.2017 and not incorporated into the contract then the contractor has to claim the transitional rebate of the taxes paid under the earlier laws and the amount eligible would be credited to the Input Tax Credit Ledger of the contractor.

With regarding to the issue of the impact of change of tax regime is concerned a detailed annexure explaining the methodology of calculation of the impart of change of tax regime along with an illustration is placed in the file. (Annexure A & 13)

Further, the tax difference should be calculated on each works separately. Based on the result obtained on calculation of the tax difference on the contract value, concerned department / Authority has to decide whether contract agreement needs to be changed or not. Hence, the applicant may be informed to submit a proposal to the concerned department from whom the contract was awarded.

(Approved by Additional Chief Secretary to Govt. Finance Department),

Sd/-

(KGayathri)

Under Secretary to Govt.

Finance Department (PW Finance Cell)

Sd/-

Chief Account Officer
KUWS&D Board
Bangalore

14. Both the aforesaid Circulars came up for consideration before the co-ordinate Bench of this Court under identical circumstances in MAS Constructions's case supra, wherein it was held as under:-

" The petitioner has sought for issuance of an appropriate writ to the respondent to reimburse GST amount of Rs.42,01,582/- to the petitioner and has sought for directions for payment of interest on tax dues at 18% per annum being the statutory interest rate chargeable under Section 50 of the CGST Act, 2017.



2. The petitioner submits that the respondent authority had invited bids pursuant to floating of tender and the petitioner was awarded the contract. It is further submitted that the rates that were finalised as per the bid documents included sales tax component @ 5%. It is to be noted that the tender and work orders were allotted to the petitioner on 07.12.2018 and 29.12.2018 which is admittedly after coming into force of the Goods and Services Act ("the GST Act", for short).

3. The petitioner submits that necessary payment at the petitioner's end of the applicable GST being statutory requirement has been made and the details of the payment are as per the table mentioned in Para 11 of the petition, which reads as under:

Particulars	Period	Balance GST not paid to petitioner
Renovation of swimming pool and operation	From 14.07.2019 to 30.11.2019	Rs.15,42,727
Rehabilitation of MG Park	From 31.07.2019 to 04.08.200	Rs.26,58,856
	Total	Rs.42,01,582

4. The petitioner submits that after having paid the applicable GST, the petitioner has made representations on 01.08.2019 vide Annexure-'F' and 27.02.2020 vide Annexure-'H', whereby the petitioner has called upon the respondent to release the GST amount. The request of the petitioner was taken note of by the respondent authority which has sought for clarification from the Karnataka Urban Infrastructure Development and Finance Corporation ("KUIDFC", for short) as per their letter dated 06.12.2019. The specific clarification that was sought is as to whether GST is required to be made good to the



contractor as it was only 5% of the VAT which was provided for in the contract.

5. The KUIDFC by their communication dated 03.01.2020 has opined as follows:

"With reference to the above, your request for clarification on Tax calculation for the pre-GST period and post-GST period in the running bills of works has been examined by the GM (PF), KUIDFC and has suggested the following procedure for calculating Taxes for pre-GST period and post-GST period as follows:

1. Calculate the balance works to be completed in the original contract.
2. Derive the rate of materials, KVAT items required to complete the balance works.
3. Deduct the "KVAT" amount from those materials and the service tax also.
4. Add the applicable "GST" on those items.
5. Input Credit on the materials is to be arrived at and to be set at against the output GST (Billed to the Smart City) In this regard, a copy of the detailed report submitted by the Consultants M/s.S.R. & M.R. Associated, Chartered Accountants to KUIDFC on goods & service tax matters is enclosed herewith for your reference and further action in the matter."
6. It is not in dispute that the respondent authority had sought for clarification from KUIDFC, communication has been made out to the respondent authority as per the letter dated 03.01.2020 in terms as noticed above.
7. Various other contentions are raised including that the contracts have a dispute resolution clause and accordingly, any dispute relating to the rates or as regards to the assertion of the petitioner that GST paid by him is required to be made good, is a matter to be referred in terms of the dispute resolution clause. However, the petition could be disposed off without recording any finding on such contention.



8. It is to be noticed that clarification on 03.01.2020 by the KUIDFC is clear.

9. The Karnataka Urban Water Supply and Sewerage Board had sought for a clarification relating to implementation of GST in relation to performance of portions of contract after coming into force of GST. The Finance Department by its clarification dated 14.12.2020 has also opined that the tax difference ought to be calculated on each of the works and necessary steps to be taken to decide as to whether contract agreement needs to be changed. While making such clarification, the nature of reconciliation of tax paid in the pre-GST regime as well as taxes as applicable relating to all taxes in post-GST regime has been taken note of. The methodology and impact of change of tax has also been referred to. This stand has been approved by the Additional Chief Secretary to Government, Finance Department. This clarification made in the context of an authority set up under a statute and taking note of the clarification made by the KUIDFC, the respondent is required to act in terms of the clarification made.

10. Further, insofar as tax component is concerned, as the contracts were entered after coming into force of the GST Act, and in light of the opinion expressed by a clarification made on 03.01.2020, the respondent is required to make good the GST after adjusting the amounts of sales tax that was provided for in the contract entered into between the petitioner and the respondent.

11. It is further to be noticed that the tax component is an independent component which the petitioner does not retain as a profit and is a statutory payment to be made. Looking into the nature of such payment of GST, the respondent is required to honour the same in terms of the clarification dated 03.01.2020. The consideration by the respondent to be made within a period of not later than twelve weeks from the date of release of the order.

12. Accordingly, the petition is disposed off."

15. So also, in the case of Dhabaleshwar Pattnaik Vs. State of Orrisa, referred to supra, certain directions have



been given by the Division bench of the said Court as under:

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 2014 is to be ascertained first. 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, 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.



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(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 the works contractor is to be reduced accordingly. In case excess payment has already been made to the works contractor in pursuance of the origin 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/Turnkey/Lumpsum mode.

16. So also, in the case of Subaya Construction's case supra, the Madras High Court held as under:-

"When the Petitioners entered into an agreement with the Respondent-Board, the contract price comprise three components viz., cost factor, profit margin and tax component. There cannot be any contest regarding the cost factor and profit margin. The tax liability will have to borne by the Respondent-Board. The Respondents are directed to reworking terms of the contract and entered into a revised agreement with the Petitioners. The entire exercise shall be concluded within a period of 8 weeks from the date of receipt of copy of this order".

17. Similarly, in Bhagwati Constructions' case supra, the Gujarat High Court held as under:-

25. The issue that arises for our consideration is, whether the respondents are justified in withholding the refund/reimbursement in favour of the writ-applicants.

26. The Government of India through the Ministry of Railways, had issued an order on 27.10.2017 for the GST neutralization of the contracts. The order reads as under



"Government of India Ministry Of Railways (Railway Board) New Delhi

No. 2017/CE-I/CT/7/GST, dated 27.10.2017

To

As per list attached

Sub: Impact of GST on Existing Works Contracts

1. Ministry of Railways have received a number of representations from Zonal Railways, railway contractors and contractors associations with a request that the increased tax liability due to implementation of GST should be borne by railways in works contracts awarded before implementation of GST. The issue was under consideration of Board for some time. It is seen that the impact of GST varies, depending upon the type of work, business model adopted by contractor and also on the state in which these works are being carried out. The impact is much more in labour intensive works like P. Way linking. Earthwork etc.

2. Considering the above, it has been decided to make existing works contracts awarded before implementation of GST, as GST neutral after carefully taking into account the input tax credit available to the contractor, on a case to case basis, on production of documentary evidence. This exercise may involve reimbursement to contractors or recovery from contractors depending upon the tax liability of the contractor before GST and after GST including input tax credit available to the contractor after GST.

3. Zonal Roadways/Production Units may therefore work out modalities through a procedure order with the approval of General Manager in consultation with Principal Financial Advisor & legal cell. Following should be kept in view while framing the procedure order

3.1 For dealing with impact of GST in individual contracts, a supplementary agreement is to be entered into with the contractor in consultation with financial advisor in terms of Para 1265 of the Engineering Code.

3.2 A clause is to be added in the supplementary agreement to state that in case there is any further



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change in the GST tax structure till the date of completion of work or any error is noticed in the calculation of amount payable/recoverable till the release of Final Bill amount to contractor, the same shall be paid by the Railways or recovered from the contractor's bills/security deposit or any other dues of contractor with the Govt of India.

3.3 In case while awarding the contracts, the reasonability of rates was justified by Tender Committee considering the impact of CST, such compensation would not apply.

3.4 For neutralizing GST impact on the works contracts awarded before implementation of GST along with documentary evidence, the contractor should submit work sheet of tax liability before GST and after GST duly certified by chartered accountant engaged by him. The tax liability of the contractor before implementation of CST should be worked out taking into account all stipulated taxes in force before GST implementation i.e. Excise duty. VAT including VAT on Excise duty. Entry tax, Octroi duty, prevalent Service tax etc., irrespective of whether the same were actually paid by agency or not.

3.5 The rate reasonability and quantities of input materials for which ITC shall be available to the contractor, should be ensured by the executive with due care in consultation with associate finance.

3.6 Sample post checks of the compensation made to the contractor may be got undertaken by the GST consultant engaged by the Zonal Railways/Production Units.

3.7 Recovery, if any, which is required to be done from the contractors, may be regulated as per Section 171(1) of CGST Act 2017.

4. This is issued with the approval of Board (ME, FC, CRB)

(Prem Sagar Gupta)
Executive Director/Civil Engineering (G)/Railway Board



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27. Pursuant to such order, the Western Railways issued a Joint Procedure Order dated 21.1.2018 laying down the procedure for the GST neutralization based upon the policy of the Government of India. The relevant portion of the order reads thus:

"4. The review for GST neutrality is to be done on a case to case basis on the production of various detailed out in the following paragraphs of the JPO

XXXXXXXXXXXXXXXXXXXX

8. Procedure to be followed for GST neutralization:

8.1 In accordance with the Railway Board's letter dated 27.10.2017 all contracts awarded prior to at 01.07:2017 and all such contracts for which tenders were opened prior to 01.07.2017 but finalized after the implementation of GST are to be considered for GST neutralization. However, if any of the tender has been finalized duly considering the impact of GST. then such contract will not be eligible for the proposed GST neutralization

8.2 For dealing with the impact of GST in individual contract, a Supplementary (Subsidiary) agreement is to be entered into by the Executive, with the contractor, duly vetted by Finance, in terms of Para 1265 of the Indian Railway Engineering Code A Supplementary agreement is to be signed by the Original Agreement Signing Authority or by the Authority delegated such powers (Proforma for the agreement is given in Annexure-A).

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8.5 The contractor shall submit a work sheet for On Account/FCC bills for assessing the tax liability before and after GST including the input tax credit available to the contractor. This shall be duly certified by the Statutory/Tax Auditor auditing the books of the contractor. The tax liability of the Contractor before implementation of GST should be worked out taking into account all stipulated taxes in force prior to the implementation of GST i.e., excise duty, VAT, including VAT on excise duty, entry tax, octroi duty, prevalent



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service tax etc, irrespective of whether the same were paid by the agency or not for the On Account/FCC Bills.

8.6 On receipt of the Account/Final contract certificate from the executive, the contractor shall submit the following documents (for the on Account/FCC to the Executive for the GST neutralization.

a. The invoice (Bill) duly segregating the GST component from the gross amount of the work executed. This should contain details of GSTIN TIN & STRN numbers-state-wise (if he is working in more than one State alongwith the worksheet.

b. A work sheet for the tax liabilities before GST and after GST, including the list of items for which the Input Tax Credit (ITC) is available for the work. A sample copy of the work sheet is given in the Annexure-B for general guidance. The details given in this worksheet and calculations should be duly certified by Statutory/Tax Auditor auditing books of the contractor. This worksheet shall be submitted for each of the bills, which may have already been passed as per provision of para 15 of this JPO and also for all other bills being processed after the notification of the GST for the contracts falling in the categories in para 1(i) & (iii) and HO GST rates as applicable at the time of actual passing of bills will be adopted.

The worksheet shall contain details of the quantities of all input materials/services procured for the particular work/works. The contractor shall also certify that the invoices submitted for the work have not been/will not be used for any other work to claim Input Tax Credit (ITC)/refund. The contractor shall also give a certificate that no refund claims of GST are pending settlement with the GST authorities.

At the Railway end, the component of input materials/services for SOR/USSOR items will be checked with reference to the rate analysis available in the SOR/USSOR for NS items, the executive officer will carry out a detailed rate analysis considering the input materials/services required for executing the NS item



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which will be approved by JAG/Senior Scale (independent charge)

c. The contractor shall, for the On Account/FCC bills, shall submit all the original Tax Invoices for all the inputmaterial/services procured for the particular work, enfaced with agreement number, in support of the ITC and thesame shall be duly certified by the Statutory/Tax Auditor auditing the books of the contractor.

d. The tax liability of the Contractor, before implementation of GST, shall be worked out for On Account/PCC billstaking into account all stipulated taxes in force before the GST implementation i.e., excise duty. VAT, includingVAT on Excise duty, entry tax, octroi duty, prevalent service tax etc.. Irrespective of whether the same were paidby the agency or not.

e. In case the contractor has procured material from unregistered vendors/suppliers the details of suchprocurement should be included in worksheet

f. The contractor shall submit copies of GST returns GSTRI, GSTR2, GSTR3, GSTR3, etc. as available on GSTNetwork from time to time.

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10. The difference of bill amount arrived at as per the old taxes (before GST) and GST, duly considering the ITC certified by the Statutory/Tax Auditor auditing the books of the contractor, shall be checked by the Executive. The tax liability of the contractor before and after implementation of the GST, submitted by the contractor, shall be recorded in the Measurement Book clearly showing—

Tax liability before GST = Rs.....

Tax liability after GST = Rs.....

Difference =(+)/(-)= Rs.....

The bill containing these details shall then be prepared as per the format given in Annexure-B and forwarded to



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Finance for security and prior vetting The contractors claim will then be admitted to the for passing of the Bill The difference in the tax liability before the GST and after the GST and after the GST shall be reimbursed to the contractor or recovered from the contractor as the case may be.

11. Recovery, if any, from the contractors may be regulated as per section 171 (1) of CGST Act 2017, i.e., any reduction in the rate of tax on any supply of goods or services or the benefit of the Input Tax Credit shall be passed on to the recipient (Railways) by way of a commensurate reduction in the prices. The executive will review all the agreements to ensure that recovery is done, wherever due. The recovery shall be effected from the on account bills on hand and if no accountbills are pending the recovery shall be affected from the final bill/security deposit or any other dues.

28. It is germane to note that paragraph 4 of the JPOs as above provides that the review for the GST neutrality is to be done on case-to-case basis. Further, it is provided in paragraph 8.2 as above of the JPO that a supplementary agreement is to be entered in to by the executive with the contractor for dealing with the impact of the GST in individual contracts Paragraph 8.6 (b) of the JPO provides that the contractor will have to provide a work sheet for the tax liabilities before the GST and after the GST including the list of items for which the input tax credit is available for the work. It is further provided that the worksheet should contain the details of the quantities of the input materials/services procured for the particular works. Paragraph 8.6 (C) of the JPO further provides that the contractor shall submit the original tax invoices for all the input material/services procured for the particular work in support of the input tax credit. Paragraph 8.6 (f) of the JPO require furnishing the copies of the GST returns. Paragraph 10 of the JPO provides for calculating differential tax for the contract considering the input tax credit for the contract. A draft of the supplementary agreement is annexed along with the JPO

29. From the reading of the terms of the JPO as aforesaid, the following factual position emerges



(a) The calculation of the GST neutralization is envisaged separately for each contract.

(b) A supplementary agreement is to be entered into by the Railways with the contractor for the purpose of GST neutralization.

(c) The details of the input tax credit are to be provided by the contractor in respect of the input materials used for a particular work.

(d) Reimbursement/refund is to be granted for differential tax liability taking into account for pre-GST and the post-GST tax liability. If at all the post-CST liability for a particular contract is lower than the pre-GST liability, then the amount can also be recovered from the contractor.

30. In the case of the writ-applicants, it is not in dispute that the supplementary agreement has been entered into only with respect to the agreement dated 29.6.2017 executed in connection with the work of E-Tender No. Dy CE(C)/P&D/ADL/HMT-16. The parties to the agreement have clearly agreed to the GST neutralities in respect of such contract. Moreover, the writ-applicants have produced a certificate of the Chartered Accountant certifying that no GST-paid inputs have been used in the execution of the contract and, therefore, there was no input tax credit pertaining to this contract. Such facts are not in dispute. If that be so, then the writ-applicants are entitled to refund in terms of the order for the GST neutralization, issued by the Ministry of Railways read with the JPO and the supplementary agreement. In fact, it appears that this was also determined by the respondents themselves by generating a pay order in favour of the writ-applicants.

18. I find considerable force in the submission made by the learned Senior counsel for the petitioners that the tax component is an independent component which the petitioners do not retain as a profit and is a statutory payment to be made; that looking into the nature of such payment of GST, the respondents/employers are required to honour the same after determining the differential tax burden, especially for the Petitioners who are before this court where "works contract" were entered prior to



01.07.2017 during KVAT regime and works are completed pre-GST but payments are made post-GST or Contracts entered prior to 01.07.2017 but partly executed pre-GST and balance work executed post-GST or Contracts for which tenders were invited during KVAT regime and finalised after 01.07.2017 under GST regime or contracts which were invited during KVAT regime under old schedule of rates (SR) but finalised under GST regime and that a certain procedure is required to be followed to determine the amount payable by or to the works contractors/Petitioners.

19. In view of the aforesaid facts and circumstances and the Circulars dated 03.01.2020 and 14.12.2020, which have been followed by this Court in MAS constructions's case supra, and also the judgments of other High Courts referred to supra rendered under identical / similar circumstances, in order to do substantial justice, I deem it just and appropriate to dispose of the present petitions by issuing appropriate directions in this regard.

20. In the result, I pass the following:-

ORDER

(i) Petitions are hereby disposed of.

(ii) The Respondents-State and other Govt agencies / Respondents who have entered into works contract with the Petitioners are issued the following directions / guidelines:-

(a) Calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the Petitioners.

(b) The payments received by the Petitioners preGST for such of the works executed before 01.07.2017 are to be assessed under KVAT tax regime – either under COT or VAT scheme as applicable.

(c) Calculate the balance works to be completed or completed after 01.07.2017, in the original contract.



(d) Derive the rate of materials, KVAT items required or used to complete the balance works.

(e) Deduct the "KVAT" amount from those materials and the service tax, if applicable.

(f) Add the applicable "GST" on those items.

(g) Input Credit on the materials is to be arrived at and be set off as against the output GST, for those assessed under regular VAT.

(h) Further, the "tax difference" should be calculated on such balance works executed or to be executed after 01.07.2017 separately.

(i) Based on the result obtained on calculation of the tax difference on the contract value, concerned department/authority has to decide whether agreement needs to be changed or not.

(j) A supplementary agreement may be signed with the Petitioners for the revised GST-inclusive work value for the Balance Work completed or to be completed as determined above and in case the revised GST-inclusive work value for the Balance Work, completed or to be completed after 01.07.2017, is more than the original agreement work value, the Petitioners are to be paid /reimbursed, as the case may be, the differential tax amount by the concerned employer; so also, in case payments for works completed pre-GST are made postGST, the concerned employer has to pay or reimburse, as the case may be, the differential tax amount, to the Petitioners.

(iii) Petitioners are directed to submit comprehensive representations to the respective employers/Respondents within a period of 4 weeks from the date of receipt of a copy of this order, irrespective of whether they have completed the works pre-GST or post-GST or payments were received or yet to be received post-GST.

(iv) If such representations are submitted, the respective employers/Respondents are directed to



consider and dispose of the same in the light of the aforesaid directions / guidelines as expeditiously as possible and at any rate within a period of 8 weeks from the date of submission of the representations.

(v) In view of the interim orders passed by this Court in the present petitions, such of the petitioners who had not filed their GST returns during the period after 01.07.2017 are permitted to file their returns / amended returns, pursuant to the calculation of the differential tax as per procedure above under GST regime, without insisting on interest or penalty or limitation.

(vi) The GST authorities are also directed not to take precipitative action against the Petitioners for a period of 6 months from the date of receipt of a copy of this order.

(vii) Liberty is reserved in favour of the petitioners to challenge any order / decision passed / taken by the respondents or the authorities, subsequent to this order and also take recourse to such remedies as available in law.

3. The judgment of the Co-ordinate Bench in the aforesaid case has subsequently been followed by two other Co-ordinate Benches in W.P. No.8489 of 2023 disposed of on 13.08.2024 and W.P. No.13167/2024 disposed of on 29.10.2024. The same are as follows:

"In W.P. No.8489/2023:

In this petition, petitioner seeks for the following reliefs:-

" (a) Issue a writ of mandamus or any other writ or direction or order to the Respondents to reimburse the differential rate of GST to the Petitioner.



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(b) Direct the respondents by an appropriate writ in the nature of mandamus or any other writ, direction or order, to pay the interest on the tax dues calculated at the rate of 18% per annum under Section 50 of CGST Act, 2017.

(c) Grant such other consequential reliefs, as this Honourable High Court may think fit, including the cost of this writ petition."

2. Heard learned Senior counsel for the petitioner and learned counsel for respondents and perused the material on record.

3. A perusal of the material on record will indicate that the issue in controversy involved in the present petition is directly and squarely covered by the judgment of this Court in the case of Chandrashekaraiah & others vs. State of Karnataka & others - W.P.No.9721/2019 & connected cases disposed of on 11.04.2023 which has been followed by a co-ordinate Bench of this Court in the case of M.G.Arunkumar vs. State of Karnataka & others - W.P.No.104908/2023 dated 29.08.2023 as well as subsequently, in the case of Mycon Construction Ltd., vs. State of Karnataka - W.P.No.25439/2023 dated 19.02.2024 and M/s.Apoorva Construction Co., vs. State of Karnataka - W.P.No.28/2024 dated 19.02.2024, in which, this Court held as under:-

" The petitioner is before this Court, seeking the following prayers:

"(a) Issue a writ or such other order in the nature of Mandamus directing the Respondents to refund the differential GST amount paid by the Petitioners for the works executed by each of the Petitioners respectively, as per the representations dated 02.08.2022, 16.06.2023, 17.06.2023, 20.09.2023 and 30.09.2023 etc., given by the Petitioners-Contractors to respective Respondent-employers (as per the abstract Annexed) and produced at Annexure - B to B4.

(b) Issue a writ or such other order directing the Respondent No.1 - State Government, to issue a circular/policy to address the issue of payment of GST on



works contract which are executed under VAT regime or under old Schedule of Rates wherein, GST is not paid by the Respondent-Employers but is levied and paid by the Petitioner-Contractors to the GST department.

(c) Pass such other orders as may be deemed appropriate under the circumstances of the case, in the ends of justice."

2. Heard Sri. Naveen G.S., learned counsel appearing for the petitioner, Smt. Navya Shekhar, learned AGA appearing for respondent No.1 and have perused the material on record.

3. Learned counsel appearing for the petitioner submits that the prayer that is sought is to be allowed in the light of the law laid down by the Co-ordinate Bench in W.P.No.9721/2019 and connected cases disposed on 11.04.2023, wherein the Co-ordinate Bench of this Court, has held as follows:

"20. In the result, I pass the following:-

ORDER

(i) Petitions are hereby disposed of.

(ii) The Respondents-State and other Govt agencies / Respondents who have entered into works contract with the Petitioners are issued the following directions / guidelines:-

(a) Calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the Petitioners.

(b) The payments received by the Petitioners pre-GST for such of the works executed before 01.07.2017 are to be assessed under KVAT tax regime – either under COT or VAT scheme as applicable.

(c) Calculate the balance works to be completed or completed after 01.07.2017, in the original contract.



(d) Derive the rate of materials, KVAT items required or used to complete the balance works.

(e) Deduct the "KVAT" amount from those materials and the service tax, if applicable.

(f) Add the applicable "GST" on those items.

(g) Input Credit on the materials is to be arrived at and be set off as against the output GST, for those assessed under regular VAT.

(h) Further, the "tax difference" should be calculated on such balance works executed or to be executed after 01.07.2017 separately.

(i) Based on the result obtained on calculation of the tax difference on the contract value, concerned department/authority has to decide whether agreement needs to be changed or not.

(j) A supplementary agreement may be signed with the Petitioners for the revised GST-inclusive work value for the Balance Work completed or to be completed as determined above and in case the revised GST-inclusive work value for the Balance Work, completed or to be completed after 01.07.2017, is more than the original agreement work value, the Petitioners are to be paid /reimbursed, as the case may be, the differential tax amount by the concerned employer; so also, in case payments for works completed pre-GST are made post-GST, the concerned employer has to pay or reimburse, as the case may be, the differential tax amount, to the Petitioners.

(iii) Petitioners are directed to submit comprehensive representations to the respective employers/Respondents within a period of 4 weeks from the date of receipt of a copy of this order, irrespective of whether they have completed the works pre-GST or post-GST or payments were received or yet to be received post-GST.

(iv) If such representations are submitted, the respective employers/Respondents are directed to



consider and dispose of the same in the light of the aforesaid directions / guidelines as expeditiously as possible and at any rate within a period of 8 weeks from the date of submission of the representations.

(v) In view of the interim orders passed by this Court in the present petitions, such of the petitioners who had not filed their GST returns during the period after 01.07.2017 are permitted to file their returns / amended returns, pursuant to the calculation of the differential tax as per procedure above under GST regime, without insisting on interest or penalty or limitation.

(vi) The GST authorities are also directed not to take precipitative action against the Petitioners for a period of 6 months from the date of receipt of a copy of this order.

(vii) Liberty is reserved in favour of the petitioners to challenge any order / decision passed / taken by the respondents or the authorities, subsequent to this order and also take recourse to such remedies as available in law."

4. Another Co-ordinate Bench of this Court in terms of its order dated 29.08.2023 in W.P.No.104908/2023 follows the aforesaid order and allows the petition. The Coordinate Bench has held as follows:

"5. It is not in dispute that the entire tender process and allocation of work by respondent/Department is post coming into force of Goods and Services Tax. If petitioner, who is a registered Civil Contractor has completed the tender work, respondent/Department being a service recipient is under bounden duty to reimburse GST amount of Rs.2,16,51,903/- in terms of Section 13 of The Central Goods and Services Tax Act, 2017. It is also not in dispute that petitioner, who is a class-I contractor having rendered service, is under mandatory duty to pay GST amount to the department. Equally respondent/Department is under bounden duty to reimburse the GST amount. It is borne out from the records that since necessary payment at the petitioner's end the applicable GST being statutory requirement, the respondent/Department ought to have reimbursed 12%



GST amount on the total work done by petitioner. Since, there is total inaction on the part of respondent/Department, this is a fit case where mandamus needs to be issued. For the reasons stated supra, I proceed to pass the following:

ORDER

i) Writ petition is allowed.

ii) The respondent is hereby directed to reimburse GST amount as indicated in the representation dated 15.04.2023 vide Annexure-E.

iii) The respondent/Department shall reimburse the said amount within a period of six weeks from the date of receipt of copy of this order. In the light of the issue standing answered, the petition deserves to succeed and the prayer that is sought for is to be allowed.

5. For the aforesaid reasons, the following:

ORDER

(i) The petition is allowed.

(ii) The respondents are hereby directed to reimburse GST amount as indicated in the representations dated 02.08.2022, 16.06.2023, 17.06.2023, 20.09.2023 and 30.09.2023.

(iii) The respondents/Department shall reimburse the said amount within a period of six weeks from the date of receipt of a copy of this order." 4. In view of the aforesaid facts and circumstances, the present petition also deserves to be allowed.

5. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The respondents are directed to reimburse the GST amounts as indicated in the petitioner's representations / letters at Annexures-M, M1 and M2



dated 18.08.2021, 13.09.2021 and 30.01.2023 respectively together with applicable interest within a period of four weeks from the date of receipt of a copy of this order."

In W.P. No.13167/2024:

"1. Petitioners are said to be Class-I Civil Contractors involved in the business of undertaking civil works assigned by the State and its Authorities. They had registered themselves as a registered "dealer" under the provisions of Karnataka Value Added Tax (KVAT) and were paying tax on the turn over. With coming into effect of Goods and Services Tax Act 2017, they have registered themselves as a taxable person under the GST Act and have obtained independent GST registration number. The change in regime from KVAT to GST resulted in certain excess amount being paid by the petitioners to the Government Authorities. They have made representations for refund of the same. As the same has not been considered so far, the present writ petition is filed with the following prayer:

"WHEREFORE, the Petitioners most humbly pray that this Hon'ble Court be pleased to:

- (a) Issue a writ or such other order in the nature of Mandamus directing the Respondents 4 to 10 to refund the differential GST (being the difference between VAT and GST) as per the orders of this Hon'ble Court in WP No.9721/2019 vide Annexure-A and WP 28/2024 vide Annexure-G1 for the works executed by each of the Petitioners respectively, as per the representations produced at Annexure-D, D1 to D21 and details of the representations at Annexure-D-22."

2. Learned High Court Government Pleader appearing for respondent Nos.1, 6 to 9 upon instructions submits that petitioners are entitled to the refund of differential amount (being the difference between VAT and GST). However, petitioners have not produced all the relevant details and the respondents are not aware as to the exact



amount to be refunded to the petitioners and if they were to provide all the relevant particulars, their case will be considered in accordance with law. The respondents do not dispute the order passed by this Court in W.P.No.9721/2019 and connected matters and also W.P.No.8489/2023 under similar circumstances. There is no reason why the order passed in the aforementioned writ petitions should not enure to the benefit of the petitioners. Hence, the following:

ORDER

- i. Petitioners are given liberty to make a detailed representation to respondent Nos.2 to 10 enclosing all the necessary particulars.
- ii. Upon receipt of such representation, respondent Nos.2 to 10 are directed to consider the same and refund the amount due to the petitioners within a period of eight weeks thereafter.
- iii. The writ petition is disposed of."

4. In the order passed by this Court in W.P. 25439 of 2023 disposed on 16.09.2025, the contentions of the respondents are all taken note of and an order is passed. Identical contentions are projected in the case at hand including that of subsistence of an arbitration clause between the parties. The same being already considered by the Co-ordinate Bench in Writ Petition No.9721 of 2019 and connected cases, I deem it appropriate to follow suit and pass the same order as follows:



ORDER

(i) Writ petition is disposed of.

(ii) The Respondents-State and other Govt agencies / Respondents who have entered into works contract with the petitioner are issued the following directions/guidelines:-

(a) Calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the petitioner.

(b) The payments received by the petitioner pre-GST for such of the works executed before 01.07.2017 are to be assessed under KVAT tax regime either under COT or VAT scheme as applicable.

(c) Calculate the balance works to be completed or completed after 01.07.2017, in the original contract.

(d) Derive the rate of materials, KVAT items required or used to complete the balance works.

(e) Deduct the "KVAT" amount from those materials and the service tax, if applicable.

(f) Add the applicable "GST" on those items.



(g) Input Credit on the materials is to be arrived at and be set off as against the output GST, for those assessed under regular VAT.

(h) Further, the "tax difference" should be calculated on such balance works executed or to be executed after 01.07.2017 separately.

(i) Based on the result obtained on calculation of the tax difference on the contract value, concerned department/authority has to decide whether agreement needs to be changed or not.

(j) A supplementary agreement may be signed with the petitioner for the revised GST-inclusive work value for the Balance Work completed or to be completed as determined above and in case the revised GST-inclusive work value for the Balance Work, completed or to be completed after 01.07.2017, is more than the original agreement work value, the Petitioners are to be paid /reimbursed, as the case may be, the differential tax amount by the concerned employer; so also, in case payments for works completed pre-GST are made post-GST, the concerned employer has to pay or reimburse, as the case may be, the differential tax amount, to the Petitioners.



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(iii) Petitioner is directed to submit comprehensive representations to the respective employers/Respondents within a period of 4 weeks from the date of receipt of a copy of this order, irrespective of whether they have completed the works pre-GST or post-GST or payments were received or yet to be received post-GST.

(iv) If such representations are submitted, the respective employers/Respondents are directed to consider and dispose of the same in the light of the aforesaid directions / guidelines as expeditiously as possible and at any rate within a period of 8 weeks from the date of submission of the representations.

(v) In view of the interim orders passed by this Court in the present petition, the petitioner if he had not filed his GST returns during the period after 01.07.2017 is permitted to file his returns / amended returns, pursuant to the calculation of the differential tax as per procedure above under GST regime, without insisting on interest or penalty or limitation.

(vi) The GST authorities are also directed not to take precipitative action against the petitioner for a period of 6 months from the date of receipt of a copy of this order.

(vii) Liberty is reserved in favour of the petitioner to challenge any order / decision passed / taken by the respondents or the authorities, subsequent to this order and also take recourse to such remedies as available in law.



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All contentions of both the parties shall remain open.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

RSH / CT: ANB
LIST NO.: 1 SL NO.: 13