

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 02.04.2025

Pronounced on:08.04.2025

RP No.43/2024

Vishal Verma S/o Sh. Sham Sunder Verma
R/o Poonch Tehsil Haveli District Poonch
Sole Proprietor of M/s Kiran Constructions
Main Bazar, Surankote, District Poonch J&K

...Petitioners(s)

Through:- Mr. Ajay Kumar Vali, Advocate with
Mr. Raghav Gaiind, Advocate

Versus

1. Union of India through it Secretary, Ministry of Defence,
101-A South Block, New Delhi-110011
2. Engineer in Chief Branch
Military Engineering Services
Kashmir House Rajaji Marg,
New Delhi-110011
3. HQ Chief Engineer, Udhampur Zone
C/o 56 APO
4. PCDA Northern Command
Narwal Pain, Satwari, Jammu
5. HQ CWE Rajouri
Through Works Engineer
C/o 56 APO-900129
6. Garrison Engineer 881 EWS
PIN-900234 C/o 56 APO
7. Assistant Garrison Engineer
C/o 56 APO, PIN-900234

...Respondent(s)

Through:- Mr. Vishal Sharma, DSGI

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar “J”

1. This review petition by one Vishal Verma Proprietor M/s Kiran Constructions seeks review of our judgment dated 3rd November, 2023 passed in WP(C) No.932/2021 titled *Vishal Verma v. Union of India and others*.

2. Before we advert to the grounds for review urged by the learned counsel appearing for the review petitioner, we deem it necessary to give few background facts leading to the filing of this review petition.

3. Vide SRO-GST-11 dated 8th July, 2017, the Government of Jammu & Kashmir notified different rates of taxes on intra-State supply of services of various description. The construction services under Heading 9954 were notified to be taxed at the rate of 9%. However, in the 20th GST Council meeting held on 5th August, 2017, a decision was taken to reduce the rate of GST on Works Contract Services from 18% to 12 %. This information, as is claimed by the review petitioner, was available with the review petitioner when he submitted his tender(s). The review petitioner submitted his tenders after the decision of GST Council recommending reduction of rate of GST on works contract from 18% to 12%. Formal notification by the Government of Jammu & Kashmir in terms of SRO-GST-06 (Rate) notifying the new rates of GST was issued on 21st September, 2017, which was admittedly after the submission of the bids by the review petitioner as also the last date fixed for submissions of tenders i.e.

01.08.2017. The GST rates came to be reduced from 18% to 12% vide notification dated 21st September, 2017. The bid(s) submitted by the review petitioner were accepted by the department concerned, works allotted and commenced after the issuance of notification dated 21st September, 2027. The review petitioner like the other similarly situated contractors was issued a letters dated 6th April, 2021 by respondent No.6 calling upon him to deposit the differential amount of tax by 30th April, 2021.

4. M/s Pardeep Electricals and Builders Private Limited, a construction company, who was also faced with the similar notice, approached this Court way of WP(C) No.2183/2019, which came to be disposed of along with three other connected matters vide judgment dated 23rd December, 2020. Paragraph Nos.3, 4 and 5 of the Division Bench judgment dated 23rd December, 2020 are reproduced by us in paragraph No.8 of the judgment sought to be reviewed. A categorical finding was returned by this Court that there was no dispute that the rate of tax on the contracts, on the last date of submissions of bids, in all cases was 18%, which was subsequently reduced to 12%. This Court, however, found that the notices for recovery of the differential amount issued by the respondents were in violation of the principles of natural justice, in that, the contractors had not been given an opportunity of hearing so as to enable them to point out that the amount of tax as demanded by the respondents was not due even after the reduction of rates, if calculated properly. The Court further

clarified that the liability to pay tax was not in dispute and it was only the quantum. The controversy should have rested there. Unfortunately, M/s Pardeep Electricals and Builders Private Limited and many others including the review petitioner herein raked up the same issue yet again by filing different writ petitions. The writ petition filed by Pardeep Electricals and Builders Private Limited [WP(C) No.170/2021] was decided vide judgment dated 3rd November, 2023. The plea of the petitioner therein that they had taken into consideration the reduction of GST on works contract from 18% to 12%, as recommended by the GST Council in its 20th meeting held on 5th August, 2017 and, accordingly, made their bids, was considered and rejected. This Court was of the opinion that the GST Council in its meeting had only made a recommendation for reduction GST on works contract from 18% to 12%, which recommendations were accepted and statutory notification was issued only on 21st September, 2017. This Court also took note of the issue having been already decided by the Division Bench of this Court in its judgment dated 23.12.2020 passed in WP(C) No.2183/2019 along with three other connected matters. This is how this Court, in terms of its judgment dated 03.11.2023, reiterated what was said by the earlier Division Bench and dismissed the petitions. The writ petition filed by the review petitioner herein i.e. WP(C) No.932/2021 was also premised on similar grounds. The same was taken up along with other similarly situated petitions and vide order dated 03.11.2023, the same was also dismissed in light of the judgment dated 03.11.2023 passed in WP(C) No.170/2021. It is this

judgment passed by us the petitioner is aggrieved of and seeks review of the same.

5. The review is sought by the review petitioner on the ground that this Court has not appreciated that the order allotting the work to the review petitioner were issued after 21st September, 2017 i.e. after the rate of tax stood already reduced and that this Court also did not appreciate and take into consideration that even Condition No.49 of the Special Conditions of tender document was in the teeth of the statutory provisions of the GST Act. It is submitted that, in terms of Section 13 of the Central Goods and Services Tax Act, 2017, liability to pay tax on services arise at the time of supply, as determined in accordance with the provisions of Section 13. It was, thus, sought to be argued that Condition 49 of the Special Conditions of Tender Document, which we have reproduced in paragraph No.12 of the judgment, was in the teeth of the aforesaid statutory provisions. Special Condition 49, though part of contract, ought to have been ignored by the Division Bench. The argument was also put forth by the learned counsel appearing for the review petitioner that in terms of SRO GST-06 dated 21.09.2017, there was no reduction of GST on Works Contract and the Works Contract continued to be governed by SRO-GST-02 dated 22nd August, 2017, which had notified the rate of GST for Works Contract as 12%. It was, thus, sought to be contended that bid(s), which the petitioner submitted, were keeping in view SRO dated 22nd August, 2017 and, therefore, it was not a case of reduction of GST from 18% to 12%

authorizing the respondents to recover the differential amount from the petitioner.

6. The review petition is contested by the respondents. Mr. Vishal Sharma, learned DSGI countered the arguments of learned counsel for the petitioner by submitting that all the issues, which the review petitioner is seeking to raise in this review petition, have already been set at rest by this Court in WP(C) No.2183/2019 decided on 23.12.2010 and the judgment dated 03.11.2023 passed by this Court in WP(C) No.170/2021. The review petitioner was fully covered by the aforesaid judgment and, therefore, his petition was rightly dismissed by this Court. He would submit that in the absence of demonstration of any error apparent on the face of record, the review jurisdiction cannot be exercised by this Court to recall its order, which has since attained finality. Mr. Sharma would submit that the learned counsel for the petitioner, in the garb of review petition, has thrown challenge to a concluded judgment of this Court on selfsame old grounds without there being any new fact or law brought to the notice of the Court.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by this Court does not suffer from any error apparent on the face of record nor there is discovery of any new fact, which was not in the knowledge of the review petitioner when the judgment sought to be reviewed was passed. The review petitioner has also not been able to

point out any other sufficient reason, which would persuade us to recall our well considered judgment.

8. Special Condition 49, as reproduced in paragraph No.12 of the judgment passed in M/s Pardeep Electricals and Builder Pvt. Ltd, makes it abundantly clear that the rate quoted by the contractor shall be deemed to be inclusive of all taxes, duties, royalties, octroi and other levies payable under the respective statutes. The tendered rates shall be deemed to be inclusive of all “taxes directly related to contract value” with existing percentage rates prevailing **on the last due date for receipt of tenders**. Any increase in percentage of rate of “taxes directly related to contract value” with reference to prevailing rates on last due date for receipt of tenders shall be reimbursed to the contractor and similarly any decrease in percentage rate of “taxes directly related to contract value” with reference to prevailing rates on last due date for receipt of tenders shall be refunded by the contractor to the Government/deducted by the Government from any payment due to the contractor.

9. From a plain reading of Clause 49, in its entirety, it becomes abundantly clear that the rates quoted by the contractor in his tender shall be inclusive of all taxes related to contract value, which would obviously include GST. The rate quoted by the contractor shall be taken to be inclusive of GST **with existing percentage rate as prevailing on the last date for receipt of tenders**.

10. Indisputably, on the date review petitioner submitted his tender and even on the last date due for receipt of tenders, the rate of GST was 18%. It is true that before the last date of submission of bids, there was a decision taken by the GST Council on 5th August, 2017 recommending reduction of taxes on works contract from 18% to 12%, but the said recommendation fructified into issuance of statutory notification only on 21st September, 2017. Recommendations of the GST Council, as already held, are only recommendations and cannot be taken as notifying new rates of GST, particularly, in the face of provisions of Article 265 of the Constitution of India. We have already dealt with this issue elaborately in our judgment passed in M/s Pardeep Electricals and Builders Pvt. Ltd. and do not wish to repeat the same while deciding this review petition.

11. Suffice it to say that in view of the clear provisions of Special Condition No.49 existing in the contract agreement, it cannot be contended by the review petitioner that the aforesaid condition in the contract is not in consonance with the various provisions of GST Act, more particularly, when there was no challenge laid to the aforesaid condition by the review petitioner at any point of time. Otherwise also, looking to the provisions of Section 13 and 14 of the CGST Act and the effect of change in rates of taxes in respect of supply of goods and services, we can say that the argument built on these provisions does not advance the case of the review petitioner. The review petitioner being one of the contracting party is bound by the Special Condition

No.49 of the Contract Agreement, which clearly provides for reciprocal liability of both parties. It clearly and in no uncertain terms provides that the Contractor shall include in the tender rates of taxes directly related to the contract value with existing percentage rates as prevailing on the last due date for receipt of tenders and if there is any subsequent increase in percentage rates of taxes, same shall be reimbursed to the contractor and similarly, if there is any decrease, the differential amount shall be refunded by the contractor to the Government or deducted by the Government from any payment due to the contractor.

12. We fail to understand how incidence of GST or the manner in which the change in rates of taxes in respect of supply of goods and services would impact the charging of GST is of any help to the review petitioner. Otherwise also, neither Special Condition 49 of the Contract Agreement was under challenge nor any argument in this regard was made before us when we decided the matter on 3rd November 2023.

13. We shall be failing in our duty if we do not address another argument which for the first time was urged before us on behalf of the review petitioner. It was argued that the contract which the review petitioner executed was governed by SRO-GST-2(Rate) dated 22nd August, 2017, whereby the composite supply of works contract was made exigible to GST @ 12% and therefore, subsequent SRO issued on 21st September, 2017 was not applicable. He relies upon S.No.3 of the Notification dated 22nd August, 2017, which deals with composite

supply of works contract, as defined in Clause 119 of Section 2 of CGST Act, 2017, supplied to Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of the following:-

- (a) A historical monument, archaeological site or remains of national importance, archaeological etc;
- (b) Canal, dam or other irrigation works;
- (c) Pipeline, conduit or plant for
 - (i) Water supply
 - (ii) Water treatment, or
 - (iii) Sewerage treatment or disposal

It is submitted that in terms of aforesaid notification, notified rate existing at the time of submission of bids was 12%, which was taken into consideration by the review petitioner at the time of submission of his bids. The notification dated 21st September, 2017 does not touch upon the works contract and, therefore, should be held inapplicable.

14. We have given our thoughtful consideration to the aforesaid aspect of the matter.

15. Suffice it to say that in terms of SRO-GST-11 dated 8th July, 2017, the construction services falling under Section 5 Heading 9954 were taxable @ 18%. The composite supply of works contract as

defined in clause 119 of Section 2 of the CGST Act, 2017 was included in the aforesaid heading. The subsequent notification SRO-GST-2(Rate) dated 22nd August, 2017 did not bring any change with regard to the construction services rendered in the shape of composite supply of works contract. SRO-GST-2(Rate) dated 22nd August, 2017 brought about changes in the rates of GST only with respect to specific composite supply of works contract, which, as indicated above, were the works contracts supplied to Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation etc of specified items like a historical monument, canal, pipeline conduit etc. This is evident from Clause (iii) of Notification dated 22nd August, 2017. Similarly, Clause (v) of the said notification deals with composite supply of works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to railways, a single residential units other than as a part of a residential complex, low-cost housing etc etc. GST Notification dated 22nd August, 2017 brought about changes in respect of item No.(iii) of Serial No.3 of SRO-GST 11 dated 8th July, 2017. For facility of reference, clause (iii) of Notification dated 8th July, 2017 reads as under:-

“(iii) construction services other than (i) and (ii) above.”

16. The composite supply of works contract as defined in Clause 119 of Section 2 of Central Goods and Services Tax Act, 2017 figures at item No. 3(ii) of Notification dated 8th July, 2017 prescribing 18%

GST was not altered by SRO-GST-2(Rate) dated 22nd August, 2017. What was sought to be amended and elaborated by notification dated 22nd August, 2017 was only item No.3 (i) at serial No.3 dealing with construction services other than composite supply of works contract mentioned in item No.3(ii) and the construction services mentioned in Clause 3(iii). The rate of GST prescribed vide notification dated 8th July, 2017, which was in-vogue at the time of submission of bids by the petitioner as also on the last due date for submission of bids, on composite supply of works was 18%. Vide notification dated 21st September, 2017, the rate of GST came to be reduced from 18% to 12%.

17. We have dealt with aforesaid argument, as the same was vehemently argued by the learned counsel appearing for the review petitioner, though the plea was not specifically pleaded and set up in the writ petition disposed of by us in terms of the judgment sought to be reviewed.

18. In view of the foregoing discussion, we do not find any merit in this petition, the same is, accordingly, dismissed.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
08.04.2025
Vinod,PS

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No