

Differential Tax Amount Post-GST Not Reimbursed to Contractors

The Hon'ble Orissa High Court, in the case of *M/s. Bhanjadeo Constructions v. State of Odisha & Others, [W.P.(C) No.38497 of 2021]* granted major relief to contractors by staying the coercive steps against the contractors and ordered the State GST department to abide by its circular, Finance Department vide Office memorandum No. FIN-CTI-TAX-0045-2017/38535/F dated December 10, 2018 to address the problems with works contracts brought on by the change from the Value-Added Tax (“VAT”) to the Goods and Services Tax (“GST”) tax system.

Facts:

M/s. Bhanjadeo Constructions (“**the Petitioner**”) challenged the decision of Respondent to withhold payment of the differential tax amount resulting from the change in tax regime, i.e. from VAT into the GST which took place on July 1, 2017.

Issue:

Whether Petitioner is liable to pay tax which they never anticipated while entering into the Contract?

Held:

The High Court noted that the Odisha Government has come out with revised guidelines vide Office Memorandum No. FIN-CTI-TAX-0045-2017/38535/F dated December 10, 2018 (“**Revised Guidelines**”) related to work contract suppressing the guidelines issued vide Finance Department letter dated December 7, 2017. The revised guidelines states that:

- The Schedule of Rates-2014 (“**Revised SoR-2014**”) has been revised by the State Government vide Work Department OM No. 13827/WD in order to comply with the provisions of GST relating to work contracts. Therefore, while preparing estimates for Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase -I, Delhi - 110091
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a work after July 1, 2017, the GST exclusive work value is to be arrived at as per the revised SoR-2014 and then GST will be added at the appropriate rate.

- In GST regime, the work contractor is required to raise Tax Invoices clearly showing the taxable work value and GST (CGST+SGST) separately.
- In case of work, where the tender was invited before the July 01, 2017 on the basis of SoR-2014, but payment made for the balance work or full work after the implementation of GST, a procedure laid down in the revised guidelines is to be followed.

In view of the revised guidelines issued by the State Government, the Court asked the Petitioner to make a comprehensive representation before the appropriate authority and directed the authorities that if such representation is filed then the authority shall consider and dispose the same in the light of the revised guidelines.

In case, the Petitioner is still aggrieved by the decision of the authority, Petitioner shall have the opportunity to challenge the same before the Court.

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