



**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.167 of 2024

Sri Nimai Kar, Class-I, Government Contractor, Son of Late Makhan Lal Kar, resident of Village-Shibnagar, College Road, P.O.-Agartala, P.S.-East Agartala, Sub-Division-Sadar, District-West Tripura, aged about 61 years.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Public Works Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
2. The Commissioner & Secretary, Public Works Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Gurkhabasti, Sub-Division-Agartala, District-West Tripura.
3. The Commissioner & Secretary, Revenue Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Gurkhabasti, Sub-Division-Agartala, District-West Tripura.
4. The Commissioner of Goods & Service Tax, Revenue Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
5. The Chief Engineer, Public Works Department (Roads & Buildings), Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Agartala, District-West Tripura.
6. The Executive Engineer, LTV Division, Public Works Department (Roads & Buildings), Government of Tripura, having office at Manu, District-Dhalai Tripura.

.....Respondent(s).

For Petitioner(s)	: Mr. Somik Deb, Sr. Advocate, Mr. Jishan Samed, Advocate, Ms. Adwitiya Chakraborty, Advocate.
For Respondent(s)	: Mr. Dipankar Sarma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT**

CAV reserved on : **02.04.2026.**

Judgment delivered on : **24.04.2026.**

Whether fit for reporting : **YES.**



JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

1. Heard Mr. Somik Deb, learned Senior Counsel assisted by Mr. Jishan Samed, counsel appearing for the petitioner and Mr. Dipankar Sarma, Addl. Government Advocate appearing for the State respondents.
2. A tender notice dt.20.03.2017 was issued by the Executive Engineer, Public Works Department (*PWD, for short*) of the Government of Tripura for execution of a works contract namely "*Improvement of Manu to Kanchanpur Road (L-35.00 Km)/SH:-Formation in widening, metalling, carpeting including protection wall and drainage work Job No.TP/ COM/ 114/2016-17*".
3. The petitioner participated in the said tender and emerged successful.
4. At the time of quoting the rates for the said tender, the petitioner had kept in mind the tax payable @ 6% of the gross value on such works contracts under the Tripura Value Added Tax Act, 2004 (*TVAT Act, for short*) regime.
5. Under Section 4(3) of the said Act, levy of VAT was permitted on works contract providing that in respect of such transfer, only so much value of goods involved in the works contract which has been paid to the dealer during the period, shall be taken into account for determining the turnover for the said period. The said provision also provided for deduction of tax at source in matters relatable to works contract at such rates as may be prescribed under the Rules framed under the said Act.



6. Rule 7(1) of the Tripura Value Added Tax Rules (*TVAT Rules, for short*) provided for deduction of VAT at source in connection with the bills, payable under the works contract.
7. The TVAT Act, 2004 came to be repealed w.e.f. 01.07.2017 by the promulgation of the Tripura State Goods and Services Tax Act, 2017 (*TSGST Act, for short*) and the Central Goods and Services Tax Act, 2017 (*CGST Act, for short*).
8. Consequent upon such repeal, VAT which was payable @ 6% in connection with works contract from the gross bills of the contractor, stood enhanced to 12% under the TSGST and CGST Acts.
9. After coming into force of the CGST Act,2017 and the TSGST Act,2017, the petitioner addressed a letter dt.04.11.2017 informing the respondents that he would not be able to execute the work at the previously quoted rates and that he would not bear the liability of any increase in the rate of tax. This letter was written by the petitioner prior to the issuance of any work order and/or execution of any agreement in furtherance of the offer made by him.
10. In reply thereto, the Additional Chief Engineer, Planning, PWD(R&B), Government of Tripura made a communication dt.23.11.2017 to the Superintending Engineer, 5th Circle, PWD(R&B), Government of Tripura noting that the Supply Advisory Board/Work Advisory Board had approved the prayer of the petitioner as tendered by him in his letter dt.04.11.2017.
11. Subsequent thereto, a work order dt.16.11.2017 was issued to the petitioner which also noted that the petitioner in his letter dt.04.11.2017 had stated as above and that the said letter would form part of the agreement.



12. But in the actual agreement entered into between the petitioner and the Executive Engineer, PWD on 24.11.2017, there is no reference to petitioner's contention that he would pay only 6% of the tax, and not the 12% under the GST regime.

13. The agreement, however, contained in Clause 42 and 42.1, the following statements:

"42. Taxes included in the bid:

The percentage/rate quoted by the contractor shall be deemed to be inclusive of the sales and other levies, duties, royalties, cess, toll taxes of Central and State Governments, local bodies and authorities that the contractor will have to pay for the performance of this contract. The employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

In addition to deduction of Income Tax/VAT & other such levies, duties, royalties, cess, toll tax at source, Tripura sales tax shall also be deducted at source from the bills of the contractor(s) at the rates as notified by the Government, from time to time.

Compulsory deduction for all works-1(one)% cess on the gross payable amount of running/final bill as per "Building and other construction workers welfare Cess Act, 1996."

"Clause 42. Any Central or State sales and other taxes including VAT on completed items of works of this contract as may be levied and paid by the contractor shall be reimbursed by the department to the contractor on proof of payment to the extent indicated in Part-II of Schedule A."

14. However, the agreement did not contain any Schedule A and consequently there was no Part-II also though such a reference to them is made in clause 42.1.



15. The respondents (PWD department), however, continued to make deductions at the rate of 12% instead of 6% from each of the Running Accounts Bills raised by the petitioner (Annexure-6).

16. Petitioner submitted a letter to the Chief Engineer of the PWD department on 16.08.2022 contending that in his letter dt.04.11.2017 he had specifically imposed a condition that he would not bear the liability of any increase in the rate of tax, that the said letter was approved even in the work order stating specifically that petitioner's letter dt.04.11.2017 would form part of the agreement; and that thereafter in the letter dt.13.11.2017 addressed by the Additional Chief Engineer, Planning, PWD(R&B) of the Government of Tripura to the Superintending Engineer, 5th Circle, PWD (R&B), his prayer made in the letter dt.04.11.2017 had been agreed to by the respondents. According to the petitioner, the act of deduction of tax @ 12% instead of 6% from each of the Running Accounts Bills raised by him in connection with the agreement totalling Rs.2,21,48,746.08/- is wholly unsustainable and that he is entitled to refund of the said sum along with interest @ 12% per annum from the respective dates of each of the deductions till the date of actual payment. He also sought release of security deposit of Rs.25,00,000/-.

17. Since there was no response to petitioner's letter dt.16.08.2022 seeking the above amount, petitioner filed WP(C) No.1069 of 2022 before this Court for a direction to the respondents to refund the differential tax to him, which had already been deducted from each of his RA Bills.

18. The said Writ Petition was disposed of on 14.12.2022 with a direction to the respondents to consider petitioner's letter dt.16.08.2022 within two months from the date of the said order.



19. In the meantime he successfully completed the execution of work and submitted a letter to the Executive Engineer, PWD on 01.12.2022 requesting for issuance of Completion Certificate and such Work Completion Certificate was issued to him long afterwards on 03.10.2024 by the Executive Engineer, LTV Division, PWD(R&B).

20. Petitioner thereafter submitted a representation on 26.12.2022 to the respondents including the Commissioner & Secretary, PWD, Government of Tripura enclosing the copy of the judgment and order dt.14.12.2022 in WP(C) No.1069 of 2022 and seeking refund of the above amounts, but they did not take any steps.

21. Petitioner thereafter filed Contempt Cas(C) No.31 of 2023.

22. While the contempt case was pending, an additional affidavit was filed by the respondent No.1 enclosing a communication dt.22.05.2023 stating that security deposit would be released to the petitioner after completion of the Defect Liability Period and contending that SGST and CGST have been deducted from the bills of the petitioner as per Clause 42 of the agreement. It was stated in the said communication that the deduction of SGST and CGST was valid because it was as per Clause 42 of the agreement and the deducted amount of CGST and SGST of Rs.47,76,250/- was already reimbursed by the said department to the petitioner and so there was no question of making a refund of Rs.2,21,48,746.08/-.

23. In the course of hearing of the Contempt Case, vide the order dt.30.05.2023 the Division Bench directed the petitioner to submit proof of the deposit of tax made by him.



24. In response thereto, petitioner gave a letter to the Executive Engineer, PWD on 05.06.2023 narrating the deductions made from each of his RA Bills.

25. The Executive Engineer, PWD responded on 19.06.2023 to the petitioner stating that he was not able to trace the relevant documents for ascertaining as to whether the amounts claimed to have been deducted by the petitioner have actually been deposited as GST relatable to the work in question.

26. Petitioner again gave a detailed representation on 10.07.2023 giving the break-up of the amount deducted from each of the RA Bills raised by him along with the necessary documentary evidence. The matter was adjourned from time to time at the behest of the respondents.

27. Ultimately the Contempt Case was disposed of on 20.12.2023 holding that there was no deliberate disobedience made out by the petitioner and liberty was reserved to the petitioner to assail the letters given by the respondents from time to time including a letter dt.12.12.2023 issued by the respondent No.3 denying the liability to pay the tax and contending therein that the impact and incidence of tax would be determined on the basis of Section 142(10) of the GST Act.

28. So the petitioner filed the instant Writ Petition.

Contentions of Petitioner:

29. Petitioner contends that as per Section 142(10) of the CGST Act, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of the Act; and since in the instant case, the



agreement was entered into on 24.11.2017, after the appointed day of 01.07.2017, the respondents cannot rely on the said provision.

30. Petitioner contends that all the materials available with the petitioner to establish his claim for refund of Rs.2,21,48,746.08/- had been placed before the respondents and so the respondents are liable to refund the same with interest @ 12% as indicated in Clause 89 of the agreement between the parties.

Contentions of respondent no.3 (The Commissioner & Secretary, Revenue Department, Government of Tripura):

31. Counter affidavit has been filed by respondent No.3 on 08.12.2023 refuting the claims of the petitioner.

32. It is also stated therein that the Commissioner of Taxes and Excise, Government of Tripura (respondent No.3) had not dealt with petitioner's representations, but they had been disposed of by the PWD department and the respondent No.3 was not aware of the same at that point of time and came to know about it only in March, 2023.

33. It is contended that impact and incidence of tax has to be determined on the basis of the mandate of the statutes and as per Section 142(10) of the CGST Act/TSGST Act, the petitioner was liable to pay the tax as per the applicable rate of the GST law, even if the agreement was entered into after the appointed day.

34. It is also stated that an SOP pertaining to differential amount of tax in a subsisting contract had been notified vide the Annexure-R/4 and that the amount payable to the petitioner would depend upon that.



The stand of the respondents 2,5 and 6 (the PWD Department of the Govt.of Tripura):

35. Subsequently, an additional counter affidavit was filed by the PWD department reiterating the same stand that the petitioner is not entitled to refund of the said amounts since the amounts were collected as per the terms of the agreement between the parties.

36. It was reiterated that the work order was issued after promulgation of the CGST Act/TGST Act and the work was also executed thereafter and so under Section 142(10) of the GST Act, petitioner was liable to pay the tax.

37. Subsequently, another affidavit was filed on 10.01.2025 by the Deputy Secretary to the Government of Tripura in the PWD department stating that the remaining Security Deposit of Rs.25,00,000/- was paid to the petitioner on 01.10.2024 and the deducted CGST of Rs.23,57,214/- and SGST of Rs.23,57,214/- were already reimbursed by the department to the petitioner after filing of the GSTR-7A return; that the balance GST for the balance final bill was paid on 19.09.2024; and the deducted GST amount thereunder will also be reimbursed by the department to the petitioner.

38. It is contended that the petitioner is not entitled to the claim of refund of Rs.2,21,48,746.08/- as difference of amount of tax (12% - 6%) deducted from each of the Running Accounts Bills since the SGST and CGST were deducted as per Clause 42 of the agreement and 1% of CGST and 1% of SGST were deducted from each of the gross Running Accounts Bills and the contractor was liable to furnish return depositing tax under the existing Act.



Petitioner's rebuttal of respondent's contentions:

39. Petitioner filed an affidavit on 17.02.2025 stating that the PWD department had made deductions at source @ 1% each under the Heads of CGST and SGST from the Running Accounts Bills raised by the petitioner and on completion of each monthly quarter, the petitioner had made payments of CGST and SGST each @ 5% in connection with the said Running Accounts Bills.

40. While admitting that the respondents had refunded Rs.47,14,428/- collected by way of deduction of CGST and SGST as per Clause 42.1, petitioner contended that he had actually deposited Rs.2,21,48,746.08/- as shown in in paragraph-4 of the said affidavit wherein a tabular column has been given of the total tax paid by the petitioner as is evident from GSTR-1 and GSTR-3B as downloaded by the petitioner from the GST portal, copies of which have been enclosed to that affidavit. He contended that under Clause 42.1, the petitioner is also liable to refund this amount of Rs.2,21,48,746.08/-.

41. Counsel for the respective parties reiterated the said contentions.

Consideration by the Court:

42. The dispute between the parties relates to reimbursement of taxes paid by the petitioner to the GST department under the CGST and TSGST Act of 2017 which came into effect on 01.07.2017.

43. Admittedly, the work order had been issued to the petitioner on 16.11.2017 and the agreement was also entered into by the petitioner with the Executive Engineer, PWD on 24.11.2017.



44. Consequently, the incidence of tax on the works contract awarded to him has to be governed by the CGST and TSGST Acts, 2017 only in view of Section 9 of the CGST/TGST Acts.

45. Also clause 42 of the agreement to the extent relevant states:

"42. Taxes included in the bid:

The percentage/rate quoted by the contractor shall be deemed to be inclusive of the sales and other levies, duties, royalties, cess, toll taxes of Central and State Governments, local bodies and authorities that the contractor will have to pay for the performance of this contract. The employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

In addition to deduction of Income Tax/VAT & other such levies, duties, royalties, cess, toll tax at source, Tripura sales tax shall also be deducted at source from the bills of the contractor(s) at the rates as notified by the Government, from time to time.

...."

46. So the petitioner is deemed to have agreed to pay to the Central and State Government levies under the CGST,2017 and TGST,2017 for the works contract he is executing.

47. Section 142(10) of the TSGST Act states that goods or services or both supplied on or after the appointed day (01.07.2017) in pursuance of a contract entered into *prior to the appointed* day shall be liable to tax under the said statute.

48. *Afortiori*, if the contract itself is entered into *after the appointed day*, the incidence of tax, as rightly contended by the respondents, has to be under the CGST Act, 2017 and TSGST Act, 2017.



49. So the plea of the petitioner that he is liable to pay tax @6% only and not at 12% under the CGST Act, 2017 and TSGST Act, 2017, cannot be countenanced particularly because such a clause is not incorporated in the actual agreement dt.24.11.2027 signed by him with the respondents though some prior letters seem to suggest that they did agree to such a demand of petitioner.

50. But we note that Clause 42.1 entitles the petitioner to reimbursement of taxes on completed items of works under the said contract as may be levied and paid by him on proof of such payment. The said Clause states as under:

"42.1 Any Central or State sales and other taxes including VAT on completed items of works of this contract as may be levied and paid by the contractor shall be reimbursed by the department to the contractor on proof of payment to the extent indicated in Part-II of Schedule A." (emphasis supplied)

This clause under the head "other taxes" of the Central/State taxes covers CGST and TGST also.

51. No doubt, there is no Part-II of Schedule A to the agreement between the parties, but the absence of the same cannot defeat the right of the petitioner to claim reimbursement of the taxes paid by him, provided he proves the payment of the same.

52. A Division Bench of this Court considered the same Clause 42.1 in a in the case of *State of Tripura v. Sri Arun Kumar Dey, Contractor*¹

In that case, there was a dispute between both the parties which resulted into an arbitral award and the Arbitrator had taken the view that though Part-II of the Schedule-A as mentioned in Clause 42.1 of the

¹ judgment dt.31.01.2024 in Arb.A. No.11 of 2022.



agreement was not there, the fault is with the PWD department which drafted the agreement; that the contractor cannot be held responsible; and the only part, which may be attributed to the contractor, is his negligence and lack of observation about the Clause 42.1 of the agreement and nothing more. The Arbitrator had held that there was no space for the Department to dispute the claim of reimbursement of all taxes on proof of payment on conclusion of the work and that Clause 42.1, even in the absence of any "Part-II" of Schedule-A, would bind the department with the obligation to pay the tax already paid by the contractor only on production of proof of payment.

This was challenged in Civil Misc.(Arbitration) No.04 of 2020 by the State Government under Section 34 of the Arbitration & Conciliation Act, 1996, but the Commercial Court dismissed the same on 23.02.2022.

The State Government then filed Arb.A. No.11 of 2022 before this Court.

The Division Bench of this Court also approved the reasoning of the Arbitrator and held that parties were bound by the Clause 42.1 of the agreement and when payment of service tax dues on the part of the contractor with the service tax department in that case was not in dispute, the contractor was entitled to be reimbursed under Clause 42.1.

Thus, the Division Bench affirmed the reasoning of the Arbitrator and dismissed the Arbitration Appeal.

The judgment of the Division bench was also affirmed by the Supreme Court in SLP(C).No.677/2025 dt.19-1-2026.

53. So the respondents cannot take advantage of absence of Part-II of the Schedule-A as mentioned in Clause 42.1 of the agreement to deny



reimbursement of taxes paid by petitioner which are supported by proof of such payment in the form of Annexures to the affidavit dt.17.2.2025 filed by him.

54. The material placed by the petitioner by his affidavit dt.17.02.2025 and the Annexures thereto (GSTR-1 and GSTR-3B), statements downloaded from the GST portal indicate that the petitioner had paid a total of Rs.2,21,48,746.08/- as taxes (other than the taxes deducted by the respondents) and the respondents have not disputed the same.

55. The denial of reimbursement of these CGST/SGST taxes which the petitioner had paid to the respective Governments inspite of agreeing in Clause 42.1 to reimburse the same to petitioner is patently arbitrary, illegal and violative of Art.14 of the Constitution of India. The State has a duty to act fairly, and not arbitrarily even in its business dealings after entering into the realm of contract.

56. Consequently, under Clause 42.1, the respondent No.s 1,2,5 and 6 are bound to reimburse the said amount to the petitioner less amounts if any already reimbursed to petitioner.

57. The plea of the counsel for the respondents that the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India because the dispute arises out of a contract cannot be countenanced because there are no disputed questions of fact in the instant case and only the interpretation of Clause 42 and Clause 42.1 of the agreement between the parties arises.



58. Similar view has been taken by this Court in *Sri Ratan Sarkar v. The State of Tripura & others*² on by placing reliance on the judgments of the Supreme Court in *ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and others*³ and *Unitech Limited and others v. Telangana State Industrial Infrastructure Corporation (TSIIC) and others*⁴.

59. Following the said judgments, this Court had held in *Ratan Sarkar* (2 supra) that if on a given set of facts, the State is found to have acted in an arbitrary manner even in a matter of contract, an aggrieved party can approach the Court by way of a Writ under Article 226 of the Constitution, and the Court, depending on facts of the said case, was empowered to grant relief; that there was no ouster of the power of the High Court under Article 226 to grant relief in matters relating to contract; and the State has a duty to act fairly, and not arbitrarily even in its business dealings after entering into the realm of contract.

60. We may also point out that the agreement between the parties in Clause 89 empowers the respondents to collect tax @ 12% per annum from the contractor, if he is due any payment to the department.

61. By the same logic, the respondents are also liable to pay interest @ 12% on the above amount to the petitioner if they have not paid amounts due to petitioner under Clause 42.1 and have denied reimbursement to the petitioner of GST paid to Central and State Governments.

² Judgment dt. 30.10.2025 of DB of this Court in WP(C) No.360 of 2023

³ (2004) 3 SCC 553

⁴ (2021) 16 SCC 35



62. In *Ratan Sarkar* (2 supra) the contractor was awarded 12% interest per annum as it was a commercial contract. In the instant case also it was a commercial contract.

63. So the petitioner is entitled to get reimbursement of Rs.2,21,48,746.08/- towards CGST/SGST paid by him (as indicated in para 4 of the affidavit dt.17.02.2025 filed by him along with Annexures) with interest at 12% p.a from the respective dates of payment made by petitioner. The said payment shall be made within 3 months from date of receipt of copy of this judgment.

64. The Writ Petition is allowed in view of above terms. No costs.

65. Pending application(s), if any, also stands disposed of.

(BISWAJIT PALIT, J)

(M.S. RAMACHANDRA RAO, CJ)

