IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.02.2026
Pronounced on	07.07.2026

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.15786, 15936 and 15940 of 2024

W.P.No.15786 of 2024

M/s.Sakthi Constructions,
Represented by its Managing Partner
S.Thirunavukkarasu … Petitioner

Vs.

1.The Additional Chief Secretary/Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

2.The Superintending Engineer,
Storm Water Drain Department,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003. … Respondents

Prayer in W.P.No.15786 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the 1st Respondent which culminated in the Impugned Order in SWDC No.A3/3779/2023 dated 26.01.2024 and quash the same as arbitrary, illegal, contrary to the Government Order in G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and against the contract conditions and further direct the Respondents,

(a)To determine the GST component payable to the Petitioner in terms of G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and determine Price Adjustment in terms of Clause 45 of the General Conditions of Contract;

(b)To make payment of GST and Price Adjustment together with interest @ 18% per annum from the due date till the date of payment, to the Petitioner for Package No.27 for the work of construction of integrated Storm Water Drains in Coovam Basin in the expanded areas of Greater Chennai Corporation.

W.P.No.15936 of 2024

M/s.P & C Projects Private Limited,
Represented by its Director
S.P.Chinnasamy ... Petitioner

Vs.

1.The Additional Chief Secretary/Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

2.The Superintending Engineer,
Storm Water Drain Department,

Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003. … Respondents

Prayer in W.P.No.15936 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the 1st Respondent which culminated in the Impugned Order in SWDC No.A3/3448/2023 dated 09.01.2024 and quash the same as arbitrary, illegal, contrary to the Government Order in G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and against the contract conditions and further direct the Respondents,

(a)To determine the GST component payable to the Petitioner in terms of G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and determine Price Adjustment in terms of Clause 45 of the General Conditions of Contract;

(b)To make payment of GST and Price Adjustment together with interest @ 18% per annum from the due date till the date of payment, to the Petitioner for Package Nos.6, 7, 12, 14, 35 and 36 for the work of construction of Integrated Storm Water Drains in Adyar Basin in the expanded areas of Greater Chennai Corporation;

(c)To return the retention amount for Package Nos.7 and 35, together with interest @ 18% per annum from the due date till the date of payment.

W.P.No.15940 of 2024

M/s.RPP Infra Projects Limited,
Represented by its Whole Time Director
A.Nithya ... Petitioner

Vs.

1.The Additional Chief Secretary/Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

2.The Superintending Engineer,
Storm Water Drain Department,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003. ... Respondents

Prayer in W.P.No.15940 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the 1st Respondent which culminated in the Impugned Order in SWDC No.A3/1910/2023 dated 25.01.2024 and quash the same as arbitrary, illegal, contrary to the Government Order in G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and against the contract conditions and further direct the Respondents,

(a)To determine the GST component payable to the Petitioner in terms of G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and determine Price Adjustment in terms of Clause 45 of the General Conditions of Contract;

(b)To make payment of GST and Price Adjustment together with interest @ 18% per annum from the due date till the date of payment, to the Petitioner for Package Nos.1, 2 and 5 for the work of construction of Integrated Storm Water Drains in Coovam Basin in the expanded areas of Greater Chennai Corporation;

(c)To return the retention amount for Package Nos.1, 2 and 5, together with interest @ 18% per annum from the due date till the date of payment.

For Petitioner (In all W.Ps)	:	Mr.V.P.Senguttuvel Senior Counsel for Mr.K.R.Nishanth
For Respondents (In all W.Ps)	:	Mr.Pramod Kumar Chopda Senior Counsel for Mr.E.C.Ramesh Standing Counsel

COMMON ORDER

By this Common Order, all these Writ Petitions are being disposed of after hearing the learned Senior Counsel for the Petitioner and the learned Senior Counsel, learned Standing Counsel for the Respondents.

2. In these Writ Petitions, the respective Petitioners have challenged the Impugned Orders as detailed below:-

Sl.No.	W.P.No.	Date of Impugned Order
1.	15786 of 2024	26.01.2024
2.	15936 of 2024	09.01.2024
3.	15940 of 2024	25.01.2024

3. This is the second round of litigation before this Court. Earlier, the respective Petitioners have approached this Court for a Mandamus, to direct the 1st Respondent to refund the amount paid by them pursuant to the implementation of Central Goods and Services Tax Act, 2017 and the Tamil Nadu Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the respective GST Enactments) and to determine the GST component payable to them in terms of G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 and determine Price Adjustment as provided under the General Conditions of Contract.

4. The facts on record reveal that the respective Petitioners responded to different packages in a tender floated by the First Respondent for Integrated Storm Water Drainage work in the city of Chennai pursuant to the tenders floated in the year 2015.

5. The respective Petitioners had responded to the bid which was accepted and contracts were awarded to the respective Petitioners for the following packages as detailed below:-

<table>
<tr><th>Sl. No.</th><th>Headings</th><th colspan="2">W.P.No.15786 of 2024 (M/s.Sakthi Constructions)</th><th colspan="3">W.P.No.15936 of 2024 (M/s.P & C Projects Private Limited)</th><th colspan="3">W.P.No.15940 of 2024 (M/s.RPP Infra Projects Limited)</th></tr>
<tr><td>1.</td><td>Packages</td><td colspan="2">27</td><td colspan="3">6, 7, 12, 14, 35, 36</td><td colspan="3">1, 2, 5</td></tr>
<tr><td>2.</td><td>Date of submission of bids</td><td colspan="2">21.08.2015</td><td colspan="3">21.08.2015</td><td colspan="3">24.04.2015</td></tr>
<tr><td>3.</td><td>Letter of Acceptance</td><td colspan="2">28.10.2015</td><td colspan="3">30.10.2015</td><td colspan="3">30.10.2015</td></tr>
<tr><td>4.</td><td>Date of Awarding of Tender</td><td colspan="2">15.12.2015</td><td colspan="3">15.12.2015</td><td colspan="3">28.09.2015</td></tr>
<tr><td>5.</td><td>Date of actual execution</td><td colspan="2">25.01.2016</td><td colspan="3">25.01.2016</td><td colspan="3">03.01.2016</td></tr>
<tr><td>6.</td><td>Total Bid Value</td><td colspan="2">Rs.44,80,60,244.45/-</td><td colspan="3">Rs.138,76,73,221/-</td><td colspan="3">Rs.45,61,35,563/-</td></tr>
<tr><td rowspan="6">7.</td><td rowspan="6">Date of Completion</td><td colspan="2" rowspan="6">01.06.2018</td><td>6</td><td colspan="2">14.03.2019</td><td rowspan="2">1</td><td colspan="2" rowspan="2">06.04.2018</td></tr>
<tr><td>7</td><td colspan="2">13.07.2018</td></tr>
<tr><td>12</td><td colspan="2">20.07.2018</td><td rowspan="2">2</td><td colspan="2" rowspan="2">28.03.2018</td></tr>
<tr><td>14</td><td colspan="2">18.07.2018</td></tr>
<tr><td>35</td><td colspan="2">21.05.2018</td><td rowspan="2">5</td><td colspan="2" rowspan="2">26.03.2018</td></tr>
<tr><td>36</td><td colspan="2">23.05.2018</td></tr>
<tr><td>8.</td><td>Date of filing of Writ Petition</td><td colspan="2">13.06.2024</td><td colspan="3">14.06.2024</td><td colspan="3">14.06.2024</td></tr>
<tr><td>9.</td><td>Total Compensation claimed through the present Writ Petitions</td><td>GST Claim</td><td>Price Adjustment/ Price Escalation</td><td>GST Claim</td><td>Price Adjustment/Price Escalation</td><td>Retention</td><td>GST Claim</td><td>Price Adjustment/Price Escalation</td><td>Retention</td></tr>
<tr><td></td><td></td><td>Rs.2,37,32,028/- + 18% interest</td><td>Rs.1,49,59,765/- + 18% interest</td><td>Rs.1,38,76,73,221 + 18% interest</td><td>Rs.10,91,18,498/-+ 18% interest</td><td>Rs.1,56,77,159/-+ 18% interest</td><td>Rs.6,13,92,134/- + 18% interest</td><td>Rs.4,27,95,878/- + 18% interest</td><td>Rs.2,94,68,317/- + 18% interest</td></tr>
<tr><td>11.</td><td>Total</td><td colspan="2">Rs.3,86,91,793/-</td><td colspan="3">Rs.1,51,24,68,878/-</td><td colspan="3">Rs.13,36,56,329/-</td></tr>
</table>

6. These works were also completed by the respective Petitioners on the dates mentioned above.

7. The respective Petitioners have claimed that they are not only entitled for reimbursement of the tax paid pursuant to increase in the rate of tax with effect from 01.07.2017, being the date of implementation of the respective GST Enactments, but also for Price Escalation / Price Adjustment under the terms of General Conditions of Contract (GCC).

8. Relevant clause relating to Tax and Price Adjustment in the General Conditions of Contract (GCC) which forms part of the General Conditions of Contract (GCC) are reproduced below:-

43. Tax	**45. Price Adjustment**
43.1 The rates quoted by the Contractor shall be deemed to be inclusive of the VAT, Sales and other taxes 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 (TDS) as per applicable law. **43.2 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days**	**45.1** Contract price shall be adjusted for increase or decrease in rates and price of labour, materials (Cement and Steel only), and other inputs to the works in accordance with the principles and procedures outlined below. A table of adjustment data is included in the PCC which indicates the coefficients of various inputs and the sources of indices for various schedules of BOQ. If the PCC does not include a table of adjustment data this sub

before the submission of bids for the Contract and the date of the last Completion Certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such damages are not already reflected in the Contract Price.	clause shall not apply and there shall be no price adjustment. **(a)** The price adjustment according to sub para (d) below, shall apply for the work done from the start date given in the PCC up to the end of the Intended Completion Date. If there is delay in completion beyond such date for reasons attributable to the contractor, the Price Adjustment for the work carried out during such period, for reasons attributable to the Contractor, shall be regulated by sub-para (g) below. **(b)** The Contract Price shall be adjusted to take account of any increase or decrease in cost after the base date, which affect the Contractor in performance of obligations under the Contract. **(c)** The total value (R) of the work done during the specified period [GCC 40.1] shall be as under: R = SUM (Rs1+ Rs2+ Rs3 + ... Rsn), Where, 'Rsn' is the value of work done during the specified period to which the price adjustment shall be applied for the relevant schedule of Bill of Quantities (BOQ) specified in P.C.C during

	the specified period, and represented as under: Rsn = (Vsn + Ssn) minus (amount of secured advance recovered in the same period + value of works executed under vairations for which price adjustments will be worked separately based on terms mutually agreed between the Project Engineer and the Contractor) Where, Vsn is the total value of work done during the specified period for the respective schedule of BOQ, and Ssn is the secured advance paid during the specified period for the respective schedule of BOQ, **(d)** The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate schedule of BOQ and certified in Payment Certificates, shall be determined from formulae which shall be of the following general type: Pn = a + b Ln/Lo + c En/Eo + d Mn/Mo + ... Where,

	"Pn" is the adjustment multiplier to be applied to the value of the work done during the period "n", this period being a month unless otherwise stated in the PCC. "a" is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments; "b", "c", "d", ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials; "Ln" [Labour], "En" [Equipment], "Mn" [Material], ... are the current cost indices or reference prices for period "n", each of which is applicable to the relevant tabulated cost element [Labour, Equipment, Steel, Cement, others] on the date, specified in the Table-2 of Adjustment Data, Prior to the last day of the period (to which the particular Payment Certificate relates); and "Lo", "Eo", "Mo", ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is

	applicable to the relevant tabulated cost element on the Base Date. **(e)** The cost indices or reference prices stated in the tables of adjustment data given in PCC shall be used. The base date shall be the date 28 days prior to the date of opening of bids. **(f)** If the Contractor fails to complete the Works within the Intended Completion date, adjustment of prices thereafter shall be made using either: i.index or price applicable for each cost element tabulated in the tables of adjustment data on the specified date prior to the expiry of the Integrated Completion Date, or ii. the current index or price applicable for the period in question whichever is more favourable to the Employer. **(g)** The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be varied by the Project Manager if they have been rendered unreasonable, unbalanced or inapplicable, as a result of variations. **(h)** Unless otherwise stated in the P.C.C., the Price Adjustment shall be done in each monthly Interim

	Payment Certificate [IPC]. The coefficients and indices are given in the Tables of Adjustment Data in Contract data. To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs. (PCC – Particular Condition of Contract)

9. By the Impugned Order, the 1st Respondent has rejected the request of the respective Petitioners for reimbursement of tax borne by the Petitioner on account of higher tax paid by the respective Petitioners under the GST Regime and on account of Price Adjustments.

10. In this connection, the respective Petitioners have given representations on the following dates:-

Date on which Representations were made to Respondents		
W.P.No.15786 of 2024	**W.P.No.15936 of 2024**	**W.P.No.15940 of 2024**
28.12.2027 12.11.2018	08.03.2021 07.11.2022	11.02.2023 25.07.2023

16.12.2019 05.02.2020 13.03.2020 24.03.2020 03.03.2021 05.12.2022 13.09.2023	10.11.2022 24.01.2023 18.05.2023 19.05.2023 22.05.2023 06.06.2023	

11. There is no dispute that the contract between the Petitioners and the Respondents contemplate resolution of dispute through Arbitration. Relevant clause from the General Conditions of Contract (GCC) is extracted below:-

> *"23. Appointment of the Adjudicator of Dispute Review Expert:*
>
> *23.1 The Adjudicator/Dispute Review Expert [DRC] named in PCC shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator/DRE, the Employer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator/DRE within 14 days of receipt of such request.*
>
> *23.1.1 The Adjudicator/DRE should be in position before "notice to proceed with work" is issued to the Contractor and an agreement should be signed with the Adjudicator/DRE jointly by the Employer and the Contractor in the form attached – Appendix 3.*
>
> *23.2 Should the Adjudicator/DRE resign or die, or should the Employer and the Contractor agree that the Adjudicator/DRE is not functioning in accordance with the provisions of the Contract; a new Adjudicator/DRC shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30*

days, the Adjudicator/DRE shall be designated by the Appointing Authority designated in the PCC at the request of either party, within 14 days of receipt of such request.

24. Procedure for Dispute

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by this Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudictor/DRE within 14 days of the notification of the Project Manager's decision.

24.2 The Adjudicator/DRE shall give a decision in writing within 28 days of receipt of a notification of a dispute.

24.3 The Adjudicator/DRE shall be paid daily at the rate specified in the PCC, together with reimbursable expenses of the types specified in the PCC, and the cost shall be divided equally between the Employer and the Contractor. Whatever decision is reached by the Adjudicator/DRE, either party may refer that decision to an Arbitrator within 28 days of the Adjudicator's/DRE's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's/DRC's decision shall be final and binding.

24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the Institution named and in the place specified in the PCC.

The Arbitrator(s) shall give a decision in writing within 120 days of start of the proceedings unless otherwise agreed to by the Parties. The Arbitrators shall entertain only those issues which have been earlier referred to the Adjudicator/Dispute Review Expert and either party is dissatisfied with the decision given by the Adjudicator/Dispute Review Expert."

12. The facts on record reveal that in view of the change in the tax regime with effect from 01.04.2017 from Finance Act, 1994 and TNVAT Act, 2006 to TNGST Act, 2017 and CGST Act, 2017, the Government of Tamil Nadu had issued G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017, by applying the principle akin to Section 64-A of the Sale of Goods Act, 1930. Section 64-A is reproduced below:-

> "**64-A. In contracts of sale, amount of increased or decreased taxes to be added or deducted**.-
>
> (1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at that time,-
>
> (a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition; and
>
> (b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

(2) The provisions of sub-section (1) apply to the following taxes, namely,-
(a) any duty of customs or excise on goods;
(b) any tax on the sale or purchase of goods"

13. In fact, the Clause relevant to taxes as extracted above from the above General Conditions of Contract *viz,* Clause 43.1 and Clause 43.2 of the General Conditions of Contract, also make it clear that the rates quoted by a Contractor shall be deemed to be inclusive of the Value Added Taxes, Sales Taxes and other Taxes. However, as per Clause 43.2, the Project Manager shall adjust the Contract Price if taxes, duties, and other levies changed between 28 days before the submission of bids for the Contract and the date of the last Completion Certificate. The adjustment shall be based on the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price.

14. As per Clause 6 to G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017, a supplier while raising bills and tax invoice post-GST, will have to collect GST from the purchaser at revised rates of notified percentage of value of supply and remit the same to the respective Government. The entire GST of the supply will have to be finally borne by the purchaser. The context of relevant Clause reads as under:-

"6. The supplier, while raising bills and tax invoice post-GST, will now have to collect GST from the purchaser at revised rates of notified percentage of value of supply and remit the same to the respective Government. The entire GST of the supply will have to be finally borne by the purchaser."

15. The case of the respective Petitioners is that they have executed work contracts under the respective contracts and were liable to tax either under Section 5 or 6 of the Tamil Nadu Value Added Tax Act, 2006 and in this case, the respective Petitioners have opted to pay tax under Section 6(1)(i) read with Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, 2007 under the compounded rates, as per which, tax was to be paid under the Tamil Nadu Value Added Tax Act, 2006 at 2% of the total contract value for the civil construction of Integrated Storm Water Drainage Work of Coovam Basin executed by the respective Petitioners. Text of Section 6(1) of the Tamil Nadu Value Added Tax Act, 2006 and Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, 2007 are reproduced below:-

Section 6(1) of TNVAT Act	**Rule 8(5)(d) of TNVAT Rules**
6. Payment of tax at compounded rates by works contractor.- (1) Notwithstanding anything contained in this Act, every dealer, other than the dealer who purchases or receive	8. Procedure for assessment.- (1) ..... (2) ..... (3) ..... (4) ..... (5) The taxable turnover of the dealer liable to pay tax under Section 5 on

<table>
<tr>
<td>goods from outside the State or imports goods from outside the Country may, at his option, instead of paying tax in accordance with Section 5, pay, on the total value of the works contract executed by him in a year, tax calculated at the following rate, namely:-

(i) Civil works contract: Two per cent of the total contract value of the civil works executed;

(ii) Civil maintenance works contract: Two per cent of the total contract value of the maintenance works executed:

(iii) All other works contracts: Five per cent of the total contract value of the works executed.</td>
<td>transfer of property in goods involved in the execution of works contract shall be arrived at after deducting the following amounts from the total turnover of that dealer, namely:-

(a)...
(b)...
(c)...
(d)All amount towards labour charges and other charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.
<table>
<tr><th>Sl. No.</th><th>Type of works contract</th><th>Labour or other charges as a percentage value of the works contract</th></tr>
<tr><td>(1)</td><td>(2)</td><td>(3)</td></tr>
<tr><td>1.</td><td>Electrical contracts</td><td>15</td></tr>
<tr><td>2.</td><td>All structural contracts</td><td>15</td></tr>
<tr><td>3.</td><td>Sanitary contracts</td><td>25</td></tr>
<tr><td>4.</td><td>Watch and / or clock repair contracts</td><td>50</td></tr>
<tr><td>5.</td><td>Dyeing contracts</td><td>50</td></tr>
<tr><td>6.</td><td>All other contracts</td><td>30</td></tr>
</table>
</td>
</tr>
</table>

16. In other words, it is the case of the respective Petitioners that on the entire contract value, they were entitled to deduct tax at 15% of the total cost towards the labour and other charges and thus were liable to pay VAT at 2% on the balance of 85% of the Contract Value.

17. There is no doubt that on account of increase in the tax component due to implementation the respective GST Enactments with effect from 01.07.2017, the respective Petitioners are entitled for reimbursement in terms of the principle akin to Section 64-A of Sale of Goods Act, 1930.

18. In this case, when the contracts were awarded to the respective Petitioners on **15.12.2025, 15.12.2015** and **28.09.2015**, respectively, the respective Petitioners were governed by the Tamil Nadu Value Added Tax Act, 2006, on the works contract in terms of Section 5 and Section 6 and under Section 66B of the Finance Act, 1994 read with the Notification issued under Section 93(1) of the Finance Act, 1994.

19. Although it is the case of the respective Petitioners that the work contract executed by the respective Petitioners for the 1st Respondent was exempted in terms of **Sl.No.12(d)** to **Notification No.25/2012-Service Tax** dated **20.06.2012**, *prima facie* indications are that the work executed by the respective Petitioners do not fall within the purview of **Sub-clause (d)** to **Clause 12** to **Notification No.25/2012-Service Tax** dated **20.06.2012**.

20. Incidentally, **Clause 12** to **Notification No.25/2012-Service Tax** dated **20.06.2012** was amended *vide* amended **Notification No.06/2015-Service Tax** dated **01.03.2015** whereby Sub-Clause (a), (c) and (f) to **Clause 12** were deleted with effect from **01.04.2015**. A further notification was thereafter issued amending the above Notification *vide* **Notification No.09/2016-Service Tax** dated **01.03.2016**. Text of relevant portion of these Notifications are reproduced below:-

Column No.1	*Column No.2*	*Column No.3*
Notification No.25/2012-Service Tax dated 20.06.2012	**Notification No.06/2015-Service Tax dated 01.03.2015**	**Notification No.09/2016-Service Tax dated 01.03.2016**
12. Services provided to the Government, a local authority or a Government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alternation of-	In the said Notification,- (i) .... (ii) in entry 12, items (a), (c) and (f) shall be omitted;	After entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely- 12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alternation of-
(a) a civil structure or any other original works meant predominantly for use other	Deleted	(a) a civil structure or any other original works meant predominantly for

than for commerce, industry, or any other business or profession; *		use other than for commerce, industry, or any other business or profession; under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: **Provided that** nothing contained in this entry shall apply on or after the 1st April, 2020.
(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);	Not Relevant	(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: **Provided that** nothing contained in this entry shall apply on or after the 1st April, 2020.
(c) a structure meant predominantly for use as	Not Relevant (Deleted)	(c) a residential complex predominantly meant for

(i) an educational, **(ii) a clinical, or** **(iii) an art or cultural establishment; ***		self-use or the use of their employees or other persons specified in the Explanation 1 to Clause (44) of Section 65B of the said Act; under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: **Provided that** nothing contained in this entry shall apply on or after the 1st April, 2020.
(d) canal, dam or other irrigation works;		
(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or		
(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to Clause 44 of Section 65B of the said Act. *	Not Relevant (Deleted)	

Note : * Sub Clauses (a), (c) & (f) of Clause 12 to Notification No.25/2012-Service Tax dated 20.06.2012 in Column No.1 were deleted *vide* a Notification No.06/2015-Service Tax dated 01.03.2015 in Column No.2

21. Clause 12A(a), which was inserted vide amendment **Notification No.09/2016-Service Tax** dated **01.03.2016** will apply to the contracts which were entered before 1st March 2015 and on which appropriate stamp duty was paid. Therefore, this Notification has not impact on the petitioner.

22. In these cases, the tender itself came to be floated in the year 2015 and the bids of the respective Petitioners were accepted during the month of October 2015. Therefore, the respective Petitioners were governed by the tax regime as it stood till then for the work done from the date of awarding till **30.06.2017**. However, for the period after **01.07.2017**, tax was to be paid under the GST regime. It is precisely for such an eventuality Clause 43.2 has been provided in the General Conditions of Contract (GCC) incorporating the principle in Section 64-A of the Sales of Goods Act, 1930 as mentioned above and Clause 43.2 of the General Conditions of Contract as per which the Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the

submission of bids for the Contract and the date of the last Completion Certificate.

23. Thus, the change in the rate of taxes, duties, and other levies between the date 28 days before the submission of bids and the date of the last Completion Certificate is to be charged by the project manager. Only restriction is that such damages are not reflected in the contract price.

24. Therefore, the amount of tax due to the change in the tax regime has to be reimbursed to the respective Petitioners. In fact, Clause 6 of G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017 also resonates with this expressly.

25. The reasons given in the Order dated 25.01.2024 impugned in W.P.No.15940 of 2024 that the retention amounts were not refunded due to Audit Objections raised, if any, has to be communicated to the respective Petitioners. Relevant portion of the Impugned Order read as under:-

> "“As per tender clause 45.1 (h) “it is stated that unless otherwise stated in the P.C.C., the price adjustment shall be done in each monthly Interim Payment Certificate (IPC). The coefficients and indices are given in the Tables of Adjustment Data in Contract data.”
> This practice was not followed by the petitioner for packages

1, 2 & 5 and the petitioner has not made any claim towards price adjustment during the work execution period while the contract was in force. The works were completed for package 1 on 06.04.2018, for package 2 on 28.03.2018, for package 5 on 26.03.2018 respectively. The petitioner had given representations towards price adjustment to the Project Manager/Superintending Engineer (SWDD) from 27.07.2019 for packages 1, 2 & 5 as an afterthought and well after the completion of work and receipt of final bills from the Project Manager/Superintending Engineer (SWDD).

Any claim towards price adjustment is operational and binding only during the work execution period and before the completion of work and receipt of final bill by the contractor (i.e., on each monthly Interim Payment Certificate (IPC) or each part/running bill).

Hence, it is concluded that the petitioner's claim of price adjustment for the works carried out in packages 1, 2 & 5 is rejected after perusing the facts and available records submitted in this regard.

iii) Claim of Retention Amount:

For the packages 1, 2 & 5, retention amount could not be released due to pending audit objections (AG Audit) related to these work packages and audit reply in this regard is put up to the concerned Audit Department by the Superintending Engineer (Storm Water Drain Department).

On perusing all the facts and after scrutiny of the available records submitted in this regard, the claim of the petitioner for the differential amount paid in respect of GST and claim towards Price Adjustment is rejected."

Similar reasons have been given in the other Orders impugned in W.P.Nos.15786 and 15936 of 2024.

26. In my view, the retention amounts are to be refunded back unless there are reasons for appropriating the retention amounts on account of

the works executed by the respective Petitioners under the contract. Merely because the audit objections were raised by the Audit General would not be a ground for not processing the amount claimed by the respective Petitioners for refund of the aforesaid retention amounts.

27. As far as the Price Escalations / Price Adjustments, they involve several disputed questions of fact and therefore this Court is unable to give any opinion on the same. The dispute can be resolved in the alternative method of dispute resolution prescribed under the General Conditions of Contract.

28. Under these circumstances, these Writ Petitions are disposed of with the following directions:-

(a) The Respondents shall,

i. refund the Tax component as per Clause 43.2 of the General Conditions of Contract (GCC) on account of change in tax regime from Value Added Tax/Central Sales Tax to the respective GST Enactments, and
ii. refund the retention amounts with interest at commercial rate.

(b) As far as the Price Escalations / Price Adjustments as per Clause 45 of the General Conditions of Contract (GCC) is concerned, the respective Petitioners are at liberty to pursue the remedy in the manner known to law.

(c) No costs.

07.07.2026

Neutral Citation: Yes / No

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To:

1.The Additional Chief Secretary/Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

2.The Superintending Engineer,
Storm Water Drain Department,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

C.SARAVANAN, J.

arb

Pre-Delivery Common Order in
W.P.Nos.15786, 15936 and 15940 of 2024

07.07.2026