IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 5150 of 2022

M/s Goutam Engineering Concern

Vs.

West Bengal State Electricity Distribution Company Limited & Ors.

For the petitioner	: Mr. Sarajit Sen,
	Mr. Saumyen Datta,
	Mr. Tapas Singha Roy.
For WBSEDCL	: Mr. Saurav Chaudhuri.
Heard on	: 14.09.2026
Judgment on	**: 14.09.2026**

Partha Sarathi Chatterjee, J.:-

1. The question which this Court has been called upon to consider in the present writ petition, which, in essence, has been preferred, inter alia, praying for issuance of a writ of mandamus and/or an appropriate order directing the respondent no. 3 to release and make payment of a sum of Rs. 19,91,148/-,

together with interest thereon at the rate of 12% per annum with effect from 22.09.2019 till the date of actual payment, is whether, in respect of a work undertaken by the petitioner for deployment of technical personnel for repair and maintenance of feeder lines emanating from the Belmuri 33/11 KV Sub-Section, the period of execution whereof was from 01.01.2015 to 31.12.2015, and in respect whereof post-facto approval was granted on 26.02.2018 and the bill was raised by the petitioner on 22.02. 2019, the petitioner is liable to pay tax under the provisions of the West Bengal Goods and Services Tax, 2017 (for short, GST Act).

2. The facts, as delineated in the writ petition and the supplementary affidavit, are that the petitioner is a company which was provisionally enlisted as an erection contractor under the Distribution Wing of the West Bengal State Electricity Distribution Company Limited (for short, "WBSEDCL") and is engaged, inter alia, in deploying technical personnel for the repair and maintenance of electrical lines within its allotted working area in Hooghly.

3. The petitioner-company was, from time to time, entrusted by WBSEDCL with various works, which, according to the petitioner, were duly executed by it without any complaint or adverse remark. Sometime in the year 2015, the petitioner-company was entrusted with the work of "Deployment of Technical Personnel for Repair and Maintenance of feeder lines emanating from Belmuri 33/11 KV Sub-Station from 01.01.2015 to 31.12.2015, during the time span from 06:00 hours to 22:00 hours of the day, under Tarakeswar (D) Division".

4. The order dated 26.02.2018, appearing at page no. 29 of the writ petition, indicates that post-facto approval of the aforesaid work was granted by the

said order. The said order also sets out, in a tabular form, the amounts payable to the petitioner towards the manpower deployed by it. The said order further makes reference to two Office Orders dated 17.05.2013 issued by the Director (HR), WBSEDCL, as well as two revised Office Orders dated 03.02.2015 and 06.08.2015.

5. The petitioner claims that, despite completion of the aforesaid work and submission of its bill, the amount payable thereunder has not been released by the respondent authorities. The payment has been withheld, essentially on the ground that the petitioner has not completed the requisite formalities relating to GST registration and that GST liability would arise in respect of the amount claimed. It is the specific case of the petitioner that, since the aforesaid work was executed by deployment of manpower during the period from 01.01.2015 to 31.12.2015, the petitioner cannot be fastened with any liability towards payment of GST in respect of such work. Despite such contention, the respondents have withheld and/or declined to release the amount payable to the petitioner. Hence, the present writ petition.

6. Mr. Sen, learned advocate appearing for the petitioner, submits that the work relating to deployment of manpower was executed by the petitioner in the year 2015. He submits that, although post-facto approval of the said work was granted by an order dated 26.02.2018, the dates of the office orders referred to in the said order would demonstrate that the petitioner had been required to supply the requisite manpower in the year 2015 pursuant to the Office Order dated 17.05.2013. It is further submitted that, by a letter dated 22.09.2019, the petitioner requested the respondent authorities to release the amount payable to it in terms of the order dated 26.02.2018. However, the

respondents, according to learned counsel, have withheld the said payment on the ground that the petitioner had not complied with the requisite formalities mandated under the provisions of the GST Act. He submits that the order dated 26.02.2018 indicates that no tax, whether by way of sales tax, VAT or excise duty, was required to be levied on the said amount.

7. Mr. Sen argues that the GST Act came into effect on 01.07.2017, whereas the entire work entrusted to the petitioner had been completed in the year 2015. According to Mr. Sen, therefore, no liability to pay tax under the GST regime can be fastened upon the petitioner in respect of a work which had already been executed prior to the coming into force of the GST Act. He submits that the denial of payment of the amount otherwise payable to the petitioner on the ground of non-compliance with the formalities relating to GST is arbitrary and unsustainable in law. He further argues that a taxing statute cannot ordinarily be given retrospective operation so as to impose a tax liability in respect of a transaction which had already taken place prior to the coming into force of such statute. Mr. Sen, accordingly, prays for issuance of an appropriate direction upon the respondent no. 3 to release the amount payable to the petitioner, together with interest thereon at the prevailing commercial rate.

8. Per contra, Mr. Chowdhury, learned Advocate appearing for the respondents, refutes the contentions advanced by Mr. Sen and submits that, although the petitioner had been assigned the work for the period from 01.01.2015 to 31.12.2015, post-facto approval of the said work was granted only on 26.02.2018. He further submits that, on 22.02.2019, the petitioner submitted twelve monthly bills, each dated 30.10.2018, without complying

with the requisite formalities under the provisions of the GST Act. According to learned counsel, in the absence of compliance with the statutory formalities relating to GST, the amount claimed by the petitioner could not be released.

9. Mr. Chowdhury further submits that, previously, a company carrying on business under the name and style of "M/s. Aim Light" had filed a writ petition, being W.P. No. 19012 (W) of 2019, against, inter alia, the petitioner-company in relation to a dispute concerning payment of wages to the labourers. He submits that the said writ petition was dismissed on the ground that the disputes raised therein were essentially civil disputes; however, liberty was granted to M/s. Aim Light to pursue its remedy by way of a civil suit. Pursuant to such liberty, M/s. Aim Light instituted a suit, being T.S. No. 494 of 2021, against the petitioner-company before the competent Civil Court having jurisdiction to entertain the said suit. It is further submitted that the respondents herein have also been impleaded as parties to the said suit and that the same is presently pending adjudication.

10. In response, Mr. Sen places before this Court an information slip obtained from the Civil Court and submits that no interim order has been passed in the said suit restraining the respondents from making payment of the amount due and payable to the petitioner. The copy of the information slip, as placed before this Court by Mr. Sen, is taken on record. He further submits that the said civil suit has been instituted by M/s. Aim Light claiming that a certain amount is due and payable by the petitioner to it and, therefore, according to Mr. Sen, pendency of the said suit does not constitute any impediment to this Court in adjudicating the issue raised in the present writ petition.

11. Head the learned advocates appearing for the respective parties. Perused the materials on record.

12. Before delving into the question that arises for consideration in the present writ petition, it would be apposite to notice the admitted facts. Admittedly, the GST regime came into force with effect from 01.07.2017, upon the West Bengal Goods and Services Tax Act, 2017 coming into force, though certain provisions thereof were brought into force on different dates. The petitioner-company was assigned the work of "Deployment of Technical Personnel for Repair and Maintenance of feeder lines emanating from Belmuri 33/11 KV Sub-Station from 01.01.2015 to 31.12.2015 during the time span from 06:00 hours to 22:00 hours of the day under Tarakeswar (D) Division". There is no dispute that the aforesaid work could not be executed during the period originally stipulated therefor.

13. The post-facto approval of the said work was thereafter granted by an order dated 26.02.2018, wherein the amounts payable to the petitioner were also detailed. The petitioner subsequently submitted twelve monthly bills, bearing nos. GEC/B-77 to GEC/B-88, all dated 30.10.2018, on 22.02.2019. The respondents have withheld the payment claimed by the petitioner on the ground of non-compliance with the requisite formalities mandated under the provisions of the GST Act. It is also an admitted position that a civil suit, being T.S. No. 494 of 2021, instituted by M/s. Aim Light against the petitioner-company, is pending adjudication before the competent Civil Court, wherein the respondents herein have also been impleaded as parties. However, no interim order has been passed in the said suit restraining the respondents herein from making payment of the amount claimed by the petitioner.

14. Section 2(102) of the GST Act defines the expression “services” to mean anything other than goods, money and securities. Thus, where a contractor undertakes to deploy technical personnel, along with vehicles, for the repair and maintenance of electrical feeder lines, such transaction would ordinarily constitute a supply of services, subject to the same being made for consideration and in the course or furtherance of business. Section 13(1) provides that the liability to pay tax on services arises at the time of supply, as determined in accordance with the provisions of Section 13. In respect of an ordinary taxable supply of services, Section 13(2), as it originally stood, provided that the time of supply would be the earliest of the date of issuance of the invoice, where the invoice was issued within the prescribed period, or the date of receipt of payment; the date of provision of the service, where the invoice was not issued within the prescribed period, or the date of receipt of payment, whichever was earlier; or, where the preceding clauses did not apply, the date on which the recipient recorded the receipt of the service in its books of account.

15. Section 142 (11) (b) of GST Act lays down that notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994.

16. However, the Audit Branch, Finance Department, Government of West Bengal, by Memorandum No. 5050-F(Y) dated 16.08.2017, issued certain clarifications and guidelines regarding the payment of tax in respect of pre-GST contracts relating to works, supply of goods and supply of services. Paragraph 3(ii) of the said Memorandum, by way of a tabulated clarification,

provided, inter alia, under clause (c) thereof, that where the services had been supplied prior to 1st July, 2017, but the invoice/bill was raised on or after 1st July, 2017, after expiry of thirty days from the date of supply of the services, service tax would be applicable.

17. Therefore, in the facts of the present case, the petitioner was entrusted with the work of deployment of technical personnel for repair and maintenance of feeder lines of WBSEDCL for the period from 1st January, 2015 to 31st December, 2015. Thus, the service in question stood rendered and completed much prior to the appointed day, i.e. 1st July, 2017. The subsequent order dated 26th February, 2018 granting post facto approval to the work already executed cannot, by itself, alter the date on which the service was actually supplied or bring such completed service within the GST regime. Equally, the fact that the bill was raised on 22nd February, 2019 cannot, having regard to the statutory scheme governing the transition from the erstwhile Service Tax regime to the GST regime, determine the taxability of a service which had already been rendered and completed in the year 2015.

18. Section 142(11)(b) of the GST Act specifically provides that notwithstanding the provisions of Section 13, no tax shall be payable under the GST Act to the extent tax was leviable on the services under Chapter V of the Finance Act, 1994. This position is further fortified by Notification No. 5050-F(Y) dated 16th August, 2017 issued by the Audit Branch, Finance Department, Government of West Bengal, wherein it was specifically clarified, in respect of services supplied before 1st July, 2017, that where the invoice/bill was raised on or after 1st July, 2017 after expiry of thirty days from the date of supply of the service, Service Tax would be applicable and not CGST/WBGST.

The present case falls squarely within the aforesaid clarification, since the service was rendered during the period from 1st January, 2015 to 31st December, 2015, whereas the bill was raised only on 22nd February, 2019. The post facto approval granted on 26th February, 2018 is of no consequence in determining the point of taxation, as it merely regularised or approved the work already performed. Consequently, the liability arising from the service in question would be governed by the erstwhile Service Tax regime and not by the GST Act.

19. In the present case, the petitioner has prayed for interest on the amount at the rate of 12% per annum, being the commercial rate. However, it appears that one writ petition has been filed and a civil suit has also been instituted against the petitioner. Although there is no interim order restraining the respondents herein from making payment of any amount due to the petitioner, there was a dispute as to whether tax was leviable on the said amount under the WBGST Act. In such circumstances, the delay in making payment of the amount cannot be fully attributed to the respondents. I am, therefore, of the view that if interest is awarded at the rate of 8% per annum, being the prevailing banking rate, the ends of justice would be sufficiently subserved.

20. In view of the findings recorded hereinbefore, the writ petition is disposed of by directing the respondent no. 3 to release and make payment to the petitioner of a sum of Rs.19,91,148/-, together with interest thereon at the rate of 08% per annum from 22nd February, 2019, being the date of submission of the bill, until the date of actual payment, after deducting such tax, if any, as would have been applicable under the pre-GST regime, provided

that the said amount is otherwise taxable, having regard to the order dated 26.02.2018. The aforesaid payment shall be made within a period of four weeks from the date of communication of this order.

21. With these observations and order, this writ petition is, thus, disposed of; however, there shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)