



2025:CGHC:40248

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 6197 of 2024

M/s Kunal BSBK Joint Venture Pvt. Ltd., Through Shri V.R. Chetty, S/o Late K.V. Chetty Age About 65 Years Vice President (Project), 4th Floor Surya Treasure Island Mall Bhilai District - Durg (C.G.)

--- **Petitioner(s)**

versus

Chhattisgarh Housing Board, Through Its Commissioner Pravas Bhavan Naya Raipur Atal Nagar Raipur (C.G.)

--- **Respondent(s)**

For Petitioner(s)	: Mr. Abhishek Rastogi, Mr. Bhishma Ahluwalia, Mr. Aniruddha Shrivastava and Mr. Anil Tripathi, Advocates.
For Respondent(s)	: Amrito Das, Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

11/08/2025

1 By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following relief(s):

“10.1 That the Hon'ble Court may kindly be pleased to issue Writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or direction, quashing and setting aside decisions dated 21.12.2017 and 02.05.2024 of the

Respondent in its entirety with consequential relief to the Petitioner;

10.2 That the Hon'ble Court may kindly be pleased to issue Writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or direction, directing the Respondent to release the payments to the extent of reimbursement of GST amounting to Rs. 9,18,32,861/-on services provided by Petitioner under impugned Contract along with interest @ 18% p.a. as per section 50 of the CGST Act, 2017 for the delay in releasing the payment to be computed from the date of submission of invoice till the date of reimbursement of GST by the Respondent.

10.3 Respondent for costs of the petition and orders thereon; and

10.4 for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

- 2** The facts, in brief, as projected by the petitioner, are that the petitioner-Company is a joint venture between BSBK Pvt Ltd. (hereinafter referred to as "BSBK") and Kunal Structure India Pvt. Ltd. (hereinafter referred to as "Kunal") which has been floated as an SPV specifically with the sole purpose to participate and execute the project. The consortium comprising Kunal and BSBK had bid for the project *Construction of LIG and EWS houses with related Infrastructure Development for Chhattisgarh Housing Board at Naya Raipur* and was declared successful bidder in the month of December, 2015. As per the conditions of the tender, a Joint Venture Company (JVC) was to be formed in the State of Chhattisgarh before signing of contract. Accordingly, jvc was incorporated under the name and style "Kunal BSBK Joint Venture Private Limited" in january 2016. Thereafter, the agreement was signed on 05.02.20216 between CGHB and the petitioner. There are only two shareholders of JVC viz; Kunal (51%) and BSBK (49%). As per the conditions specified by the CGHB in the tender, this Company cannot do any other business except the execution of the above Project which is specifically mentioned in the Memorandum of

Association (MOA). As per the understanding between Kunal and BSBK, the entire work is being executed by BSBK on back to back basis. Since the JV company was a new company, it could not have taken the credit limits in its own name from the Banks and therefore, BSBK had taken the credit limits including the CC limit of Rs. 8 Crores in its own name from State Bank of India.

- 3** According to the petitioner, the present petition is third round of litigation before this Hon'ble Court on non-reimbursement of GST by the CGHB. In the first round, directions were given to the respondent to consider and decide the grievance of the petitioner in accordance with law wherein the respondent failed to act within the purview of GST legal framework and which led to challenging the inaction of respondent through WPC 2552/2024. It was specific pleading of the petitioner before this Court that decision dated 2.5.2024 taken by the respondent on the issue cannot be considered as a decision which is binding on the petitioner as the respondent itself is a party to this dispute and is neither constitutionally empowered nor competent to adjudicate the issue of remittance of GST to petitioner. It was also categorically submitted that decision dated 2.5.2024 is merely a unilateral opinion of the respondent who is party to the dispute and need not be challenged. This Court disposed of WPC 2552/2024 by final order dated 20.11.2024 on limited ground that decision dated 21.12.2017 and 2.5.2024 of the respondent ought to have been challenged by petitioner and that the Hon'ble Court extended liberty to the petitioner to challenge the decisions dated 21.12.2017 and 2.5.2024. Hence, the present petition is filed by the petitioner challenging the propriety, validity and legality of decisions dated 21.12.2017 and 2.5.2024.

- 4 According to the petitioner, he was an eligible bidder and participated in tenders floated by CGHB under Pradhan Mantri & Mukhya Mantri Awas Yojna. Being a successful bidder, it was awarded the project. Challenge in the present petition is to the decision of the CGHB dated 2.5.2024 rejecting the representations of the petitioner and consequently denying GST reimbursement to it causing irreparable financial damage to the and consequently to its consortium partners, BSBK and Kunal. The impugned decision dated 2.5.2024 also violates the rights of the petitioner under Article 14. The contract, inter alia required a lump-sum price to be quoted. Clause 11.2 of the said contract provided that all duties and taxes shall be included in the tender price and any variation in those duties/taxes during the execution of the contract would not be payable to the contractor. This essentially meant that if there was a change in the rate of taxes being levied after the execution of the contract, the contractor would not be entitled to an additional amount on account of such variation in rate of tax. In the present case, clause 2.14A and clause 2.14F are relevant, which reads as under:

“2.14.A Taxes: The 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 Chhattisgarh Housing Board will perform such duties in regard to the deduction of such taxes at source as per applicable law. Any payment claimed by the contractor due to any change(s) in the existing tax structure shall not be entertained by the Chhattisgarh Housing Board.

Note: Service tax will not be applicable in this tender. If applicable then same will be reimbursed by the CGHB.”

2.14.F Service tax will not be applicable in EWS & LIG houses. If applicable then same will be reimbursed by the CGHB”

- 5 Mr. Rastogi, learned counsel for the petitioner submits that a perusal of the aforesaid clauses would show that the NIT made it clear that on the date of issue of NIT, service tax was not leviable on the services provided under agreement in question. It was provided in the agreement that if service tax becomes leviable in the future, then the same would be reimbursed by the CGHB. Prior to 1.7.2017, the aforesaid activity of construction of houses under aforesaid schemes provided by the petitioner to the State Government was specifically exempted from payment of service tax in view of Notification No. 25/2012 ST (Annexure P/7) dated 20.6.2012, S.No 14 (ca). As such, the petitioner was not paying service tax on the services provided to the respondent under the aforesaid contracts and was not recovering the same from the respondent. Accordingly, for the contract bid prior to 1.7.2017, neither service tax nor GST was considered to be part of the price bid and the contract was awarded at the price without considering any of above taxes. However the taxing regime relating to indirect taxes underwent a paradigm shift. The erstwhile VAT, Excise and Service Tax legislation were all repealed except for a few items and they were replaced by the Goods and Service Tax Legislation. The service tax which was prior to 01.07.2017 being levied under Finance Act, 1994 was now subsumed as a part of GST and with effect from 01.07.2017 become chargeable under the GST Act. The 101st Constitutional Amendment inserted Article 246A which subsumed all indirect taxes including service tax under GST. In place of service tax levied under Finance Act, 1994, all services were to be taxed under GST from 1.7.2017 onwards. After the introduction of GST Act w.e.f. 01.07.2017, the exemption from tax was

withdrawn and the above referred service was made taxable under GST Act vide Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 @ 18% which was reduced to 12% in accordance with Sl. No.3, Item (v) (c) of Notification No.20/2017- Central Tax (Rate) dated 22/08/2017 - The rate was again increased to 18% vide Notification No. 03/2022 dated 13.07.2022. The effective rate of GST on the services supplied by the petitioner to the respondent was charged accordingly in view of the aforesaid notifications.

- 6 According to Mr. Rastogi, the petitioner has been consistently depositing entire tax liability with the Central and State Government as per GST law and has been filing its statutory periodical returns evidencing such tax payments. The taxable event for the purposes of taxation is the event of 'supply'. The provision of 'Services' and of 'Goods' are both treated as supplies. What constitutes a service and what constitutes goods is enumerated in Schedule II, read with Section 7 of the CGST Act, 2017. Entry 6(a) of Schedule II, deems works contracts as defined in Section 2(119) of the CGST Act 2017, to be a 'Service'. It is undisputed that the petitioner while executing the agreement in question, is executing a works contract, which is a 'service' as per the GST law. Since, the earlier exemption from levy of service tax, now stood withdrawn, the petitioner addressed several communications to the respondent-CGHB bringing to their notice the aforesaid change of law and requesting them to reimburse the GST paid by it effect from 01.07.2017 as per the GST rates applicable. The officials of the CGHB, addressed a communication dated 04.08.2017 to the Chief Accounts Officer requesting him to issue the necessary orders so that the GST demanded as per the running bills could be reimbursed to the petitioner. Since no action was taken by the respondent, the petitioners addressed yet another communication

pointing out the liability of the respondent to pay applicable GST, so that the petitioner is able to comply with its obligations under the GST law. The respondent thereafter addressed a communication dated 06.09.2017 to the petitioner demanding the details of the input tax credit available to the petitioner on the material purchased and labor component of the contract. This communication was solely to enforce the petitioner to reduce the cost of the contract price by passing on the benefit of input tax credit available to petitioner and such reduction had to be done in light of Section 171 of the CGST Act, 2017. Thereafter a series of correspondence was exchanged between the petitioner and the respondent whereby the petitioner, inter alia, clarified that running bills which were being raised were after deducting therefrom the input credit on goods and services and therefore, a rebate on the contract price was given by the petitioner abiding by Section 171 of the CGST/SGST Act, 2017 while raising its running bills and it is only on this reduced amount that GST at the applicable rates was being charged on invoices. It was further brought to the notice of the respondent that since GST was being imposed as a Central Tax, in lieu of Service Tax, GST was being claimed on the bills raised after 01.07.2017 and input tax credit of IGST/CGST/SGST was being offered as a rebate in the running bills by the petitioner. The respondent Board by its communication dated 27.06.2018 sought certain clarifications and stated that those clarifications were necessary for final calculation of the GST to be reimbursed. The respondent summoned the petitioner to its office vide communication dated 04.07.2018 for discussion of passing on the necessary benefit of credits of taxes availed by petitioner (which were not available earlier) by way of reduction in contract prices.

- 7 It is submitted by Mr. Rastogi that the respondent, through its communications dated 05.07.2018 and 16.07.2018 admitted to entitlement of reimbursement of GST to the petitioner and directed the petitioner to submit the details sought on 27.06.2018 so that the calculation of reimbursement can be done as soon as possible. In response to the aforesaid queries, the petitioners submitted a point wise reply vide communications dated 09.08.2018. Vide communication dated 18.12.2018, the petitioner reminded the respondent of reimbursement of the GST over and above contract price as reduced after applying Section 171 and also brought to the notice of the respondent the legal position with regard to the reimbursement of GST. It was also explained how the input tax credit was calculated with the rates of tax on the input goods and services which were leviable under the erstwhile taxing regime. The final calculations of input tax credit to be passed on as rebate to the respondent under Section 171 of GST Act, 2017, based on which reimbursement is being claimed, was submitted by the petitioner, after multiple discussions and correspondences. This calculation was admitted and certified by the respondent and were not disputed. On commencement of GST regime, the respondent on multiple occasions vide communication dated 07.08.2018 and 05.10.2018 directed the petitioner to submit details of invoices charging GST so that the same may be reconciled with GSTN portal and respondent may avail necessary ITC of tax charged on such invoices. The petitioner submitted the requested invoices vide communication dated 22.09.2018. The aforesaid queries were replied to, to the satisfaction of the respondent. The concerned Engineer of the respondent, then directed the petitioner to submit the financial statements and copy of the Board minutes vide communication dated 11.01.2019, which was thereafter submitted by

the petitioner vide communication dated 15.01.2019. The concerned Engineer of the respondent, therefore addressed a communication dated 17.01.2019 to the Chief Accounts Officer of the respondent-Board, enclosing the necessary papers desired by that Authority for necessary action.

- 8** It is next submitted by Mr. Rastogi that despite fully satisfying all the queries raised by the respondent and despite the respondent being satisfied with the documents submitted by the petitioner towards reimbursement of its claim towards GST, the respondent without any reason have failed in their duty to have processed this claim which is due and payable to the petitioner. Since GST is a consumer based tax, the incidence of the same is on the supplier of service whereas the burden has to be borne by the recipient/ consumer and thus petitioner is entitled in law to recover this tax from the service recipient, which in this case is the respondent. Even though the petitioner is entitled in law to pass on the burden of tax on the respondent, it is obligated to discharge its liability under GST by filing the necessary returns and paying the tax due. The petitioner has in fact paid the full amount of GST under the contract and the respondent without reason, in an arbitrary manner have failed to reimburse the amount due to the petitioner. In spite of the petitioner, having paid GST from its own resources, the Respondent kept delaying the release of reimbursements, resulting in the Petitioner addressing a series of communications replying to Respondent's communication dated 5.10.2018 and also pointing out inter alia that in the invoices raised by the petitioner the rebate towards Input Tax had been passed on to the Respondent (thereby complying with the Anti-Profiteering Provisions of Section 171 of the GST Act, 2017). The Petitioner therefore had passed on the input tax credit of Rs. 7.46 Crores

approximately by way of Rebate in the Contract Price up to the Issue of RA Bill No. 32. The Respondent in turn claimed input tax credit of Rs. 12.85 Crores on the GST paid by the Petitioner, as output tax till RA Bill No. 32. Thus, the Respondent had unduly enriched themselves, contrary to law and contrary to Article 14 of the Constitution of India. The Petitioner also pointed out that the overdue GST amount has been accumulated up to Rs. 5.84 Crores till RA Bill No. 34. The respondent-CGHB has failed to consider that as per the second proviso to Section 16(2) of the GST Act, the recipient of services (i.e., CGHB) is mandated to pay GST to the supplier of goods and services within 180 days from the date of the invoice falling which the respondent-CGHB would be required to reverse the input tax credit which it has availed on such invoices. The respondent-CGHB however have chosen to disregard its legal obligations and its actions therefore contravened the relevant provisions of the GST Act, besides being arbitrary and contrary to Article 14 of the Constitution of India. In case of Petitioner's invoices raised after 01.07.2017, the Respondent has failed to make payments towards tax on such invoices. This may lead to invocation of second proviso to Section 16 against the respondent and department may initiate recovery proceedings. The respondent-CGHB has availed ITC on petitioner's invoices.

- 9 Mr. Rastogi further submits that the petitioner has communicated multiple reminders dated 5.12.2020, 21.10.2021, 10.12.2021, 09.07.2022 and 07.04.2023 requesting the respondent for reimbursement of GST, which fell on deaf ears and no response was received by the respondent. After 6 years of continuously following up with the respondent, the respondent have finally issued communication dated 17.04.2023 stating that a committee consisting of senior officers of

the respondent has been constituted to look into the question of reimbursements of GST. It is further stated that once a decision is taken by them action will be taken accordingly. In spite of addressing the aforesaid communication, the respondent have chosen without reason to not release the GST of the running bills, i.e., running bills, RA 16 to RA 63 for the period 31.07.2017 to 30.9.2024 leading to grave financial loss amounting to Rs. 9.65 Crores of tax. Thereafter, damages continue in the form of interest (presently amounting to Rs. 8.31 Crores as on date) on tax as tax stands paid by the petitioner to Government from its own pocket. The petitioner brought the aforesaid facts to the notice of the respondent by its communication dated 04.07.2023 and 13.10.2023. Since both parties could not have foreseen applicability of GST on the date of executing the agreement, the agreement specifically mentioned at clause 2.14 A & F that service tax will not be applicable in this tender. If applicable, the same shall be reimbursed by respondent. This was solely on account of aforesaid exemption. The petitioner vide its earlier communications further explained that rates quoted during bidding were considering taxes as applicable on the date of quoting the rates and acceptance of tender and hence service tax being exempted was not considered during bidding. Accordingly, the rates are exclusive of GST and the same is to be reimbursed over and above contract price. Agreeing to the above, the respondent issued various communications, wherein the petitioner has been asked to substantiate input credits which are being availed by the Petitioner after the Petitioner's services have become taxable under GST regime. Such communications bear a testimony that even respondent was of the opinion that GST is a new levy which is over and above the contract price and that the contract price has to be adjusted to the extent, the petitioner is able to pass on

the benefit of input tax credit available to the petitioner after introduction of GST regime. The petitioner requested the respondent to release the amounts due towards the GST charged on the aforesaid bills. The respondent will appreciate that under the GST regime the supplier of service is required to pay the tax irrespective of its receipt from the recipient of service. Accordingly, the petitioner is required to pay GST to the Government from its own pocket every month since July 2017. On account of shortage of cash flows on many occasions, the petitioner has been compelled to delay payment of taxes and filing of statutory returns thereby making the petitioner non-compliant in the eyes of GST Department. Now more than six years since the GST law was implemented in our Country, but the respondent has not reimbursed the GST amount to the petitioner and has caused undue financial hardship to the Petitioner. 8.47 Despite admitting to reimburse GST and multiple previous and follow up representations, the Petitioner was not granted the reimbursement which constrained the Petitioner to pursue the issue before this Hon'ble Court through WP(C) 65/2024 seeking directions to the respondent to reimburse GST. This Hon'ble Court was pleased to dispose of the petition on 19.1.2024 with directions to the respondent to decide the representations already filed and any fresh representation of the Petitioner strictly in accordance to law within 60 days. The petitioner abiding the order dated 19.1.2024 filed another reminder representation on 30.1.2024 requesting reimbursement of GST. All previous and present representation dated 30.1.2024 were not decided by the respondent within time granted by the Hon'ble Court. No communication was also done with petitioner in this regard and instead of deciding the representation and on account of expiry of period granted by Hon'ble High Court, the respondent Board directed petitioner to appear in person

and explain the case and file another submission through its communication dated 18.03.2024. The Board filed MCC 246/2024 seeking extension of time to decide the representations of petitioner. This Hon'ble Court was pleased to direct the respondent to decide the representation within further period of 30 days through its order dated 3.4.2024. In the mean while the State Government has issued specific directions dated 21.12.2017 through the Municipal Corporation of Raipur which issued similar agreements/ work orders for civil works to accredited contractors having identical tax clauses in the contract directing the Government Department (Municipal Corporation) to reimburse the GST on contracts for which price bid was made prior to 1.7.2017 i.e. before introduction of GST and which are continuing after 1.7.2017. Despite the directions, decision of the State Government, admission of the Board and to utter dismay and shock to the petitioners, respondent has rejected the reimbursement the GST amount. Another direction dated 12.7.2018 stands issued based on instructions dated 6.6.2018 of the Central Government wherein it has been directed to reimburse GST to the contractors based on evidences of payment of tax produced by the contractors. Aforesaid inaction on the part of the respondent has led to irreparable damage by way of severe financial losses to the Petitioner in the form of blockage of working capital resulting from payment of 12% / 18% tax out of the revenues earned. This amount not reimbursed has been paid to the Government by petitioner from revenue earned on services provided under the agreement. This has also led to an additional financial burden due to late filing of GST returns under GSTR-3B in the form of statutory interest @ 18% p.a. The aforesaid is a serious concern as the said tax and interest payments are deteriorating the financial health of the Consortium

Partners of Petitioner and has raised a serious question on the going concern. The Banker of the consortium partner (BSBK), SBI has been raising this issue of non-payment of GST for the last so many years for which the BSBK has no explanation to offer. Even the auditors of BSBK's Bank are giving adverse remarks on the conduct of BSBK account resulting in down grading of BSBK's internal rating. The rating agency, CRISIL has also downgraded BSBK's external rating due to this huge outstanding from the respondent. The downgrading of rating by the Bank as well as by CRISIL has resulted in increase in cost of borrowing by the Bank in terms of interest rates and BG commissions. BSBK is also facing great difficulty in renewal of credit limits every year due to non-payment of this huge amount by the respondent.

- 10 Mr. Rastogi submits that the issue of non-reimbursement of GST, as raised in the present petition, is no longer res integra. This Hon'ble Court has already conclusively adjudicated upon the matter in the case of BSBK Pvt. Ltd. vs. State of Chhattisgarh & Others (W.P.(C) No. 3339 of 2023) by its well-reasoned order dated 29.04.2024. The said decision has attained finality, having been unequivocally affirmed by the Hon'ble Division Bench of this Court, led by the Chief Justice, in W.A. No. 350 of 2024, by order dated 24.06.2024. The above-mentioned judgment lays down the binding principle that the existence of an alternative remedy of arbitration under a contractual agreement does not act as an absolute bar against the invocation of the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. It has been clearly held that this Court's inherent powers may be exercised where fundamental issues of law are involved, notwithstanding the presence of an arbitration clause.

- 11** On the other hand, Mr. Amrito Das, learned counsel for the respondent relying on the return filed, submits that perusal of the relief / prayer clause of the petition make it explicitly clear that the instant writ petition is a recovery suit being preferred by the petitioner claiming money decree from this Hon'ble Court. The petitioner is seeking issuance of a mandamus from this Hon'ble Court directing the respondents to make payment / release tax amount paid by the petitioner. The said relief cannot be sought for under the writ jurisdiction as it is a question of disputed facts for which the petitioner is seeking indulgence of this Hon'ble Court to interpret the terms of the contract. The instant writ petition is therefore not maintainable on the said count alone. the instant petition is not maintainable in the present form and content as has been preferred before the Hon'ble Court. The petitioner is a private limited Company as submitted by the petitioner. The claim raised by the petitioner as against the CGHB is arising out of a private contract which is in the realm of a private domain not involving any public law element. The claim raised by the petitioner is also arising out of a contract which is not a statutory contract, and therefore, the instant writ petition is not maintainable to enforce and execute a private law element. Since the instant petition does not involve any public law element, but is a pure and simple commercial dealing as between the parties, the extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot be enforced. There is no allegation of violation of any fundamental right except for the vague and omnibus allegation of violation of Article 14 of the Constitution of India. This petition is further not maintainable for the reason that though the petitioner has assailed validity of the order dated 21.12.2017, but then the said order has not been placed on record. Needless to mention that vide order dated 21.12.2017, the claim for

refund of GST amount paid by the petitioner was rejected. Though the petitioner has claimed that the petitioner be refunded the GST amount paid by him, but then the petitioner has not challenged the order passed by the respondent Board rejecting the claim raised by the petitioner. The instant petition has therefore been preferred in a most casual manner without due verification. The instant petition is the third round of litigation as has been preferred by the petitioner before this Hon'ble Court. The previous writ petition as was preferred by the petitioner was not preferred in an appropriate form and manner and as a result the Hon'ble Court observed as under:

“18. From the reply submitted by respondent Board it is apparent that decision was taken thereafter on 2.5. 2024. Present writ petition is filed on 6.5.2024, however, decision taken by the Committee on the representation submitted by petitioner pursuant to the order dated 19.1.2024 passed in WPC No.65/2024 was not put to challenge. Even after filing of reply raising specific preliminary objection with regard to maintainability of writ petition on the ground that decision dated 21.12.2017 as well as 2.5.2024 are not put to challenge, petitioner has not filed any rejoinder or amendment application challenging decision/order dated 2.5.2024.

19. When the claim submitted by petitioner pursuant to the observation / direction issued by this Court, was rejected by the Committee constituted by respondent Board, petitioner was under an obligation to challenge the legality, validity and propriety of the said order/decision on the ground to be taken in writ petition. However, for the reasons best known, petitioner has neither challenged nor made any amendment in writ petition challenging said decision/order dated 2.5.2024.

20. In the aforementioned facts of the case, when subsequent decision taken by respondent on the

representation submitted by petitioner regarding refund of GST has not been questioned or challenged in this writ petition, no relief as claimed by petitioner in this writ petition, can be granted.

21. Accordingly, writ petition is dismissed, reserving liberty to the petitioner to challenge the decision dated 21.12.2017 and 2.5.2024. No order as to costs.”

As such, the respondent-CGHB is in no manner responsible for the multiple rounds of litigation by the petitioner.

- 12** The petitioner was awarded the contract by the respondent CGHB for construction of various flats, buildings and other structures at Naya Raipur, Chhattisgarh vide work order dated 05.12.2015. An agreement was also executed on 05.02.2016. The petitioner by way of instant petition is primarily seeking a declaration interpreting the terms of the said contract. The petitioner has raised a demand for refund of the tax paid by the petitioner after 01.07.2017, though the terms of the contract specifically provide that the contractor cannot claim any payment made by him on account of change in the existing tax structure. The rate quoted by the contractor was inclusive of the levies, duties, taxes, etc, and therefore the contract specifically provided that no tax paid by the petitioner shall be reimbursed to the petitioner on account of change in the tax structure. The petitioner intend to claim refund of the GST paid by the petitioner after 01.07.2017 alleging that the GST paid would amount to payment of service tax. The petitioner has further pleaded in the petition that after 01.07.2017, the contract should have been amended. It is under the said circumstance that the petitioner is claiming the refund of the GST paid by it by way of the instant petition. Admittedly, the petitioner by way of the instant petition is seeking indulgence of the Hon'ble Court to interpret the provisions of the contract

containing commercial rights of the petitioner. There is no public law element involved in the instant writ petition for which the petitioner can seek indulgence of this Hon'ble Court under Article 226 of the Constitution of India. It is trite law that no petition under Article 226 of the Constitution of India is maintainable unless it involves a public law element. The dispute brought before this Hon'ble Court by the petitioner does not involve any public law element and is purely arising out of a contractual dispute containing commercial interest of the petitioner. No contractual dispute without a public law element can be brought for consideration before this Hon'ble Court under Article 226 of the Constitution of India. The instant petition is therefore absolutely misconceived and wholly misplaced. Chapter I containing the conditions of contract under Clause 1.21 clearly provides for an 'Arbitration' clause. All questions and disputes relating under the contract shall be resolved by way of the dispute resolution mechanism provided under the said clause. The dispute raised by the petitioner ought to have been raised by the petitioner invoking Clause 1.21 of the conditions of contract instead of preferring the instant petition under Article 226 of the Constitution of India. The instant writ petition is therefore not maintainable on account of availability of alternate remedy, by way of an arbitration clause. The petitioner was awarded the contract and Clause 2.14.A of the tender document clearly provides that the rate quoted by the contractor shall be deemed to be inclusive of the levy, duties, taxes, etc. which the contractor is required to pay for the performance of the contract. It was further provided that the respondent Board shall not entertain any claim, for payment by the contractor due to any change in the existing tax structure. The said clause of the tender document needs to be read along with Clause 11.2 of the tender document which also provides that the

tender price submitted by the bidder shall include all taxes and other levy payable by the contractor. It further said that any variation during execution of the contract shall not be considered. The petitioner therefore participated in the said tender process with complete knowledge that the bid price submitted by the petitioner was inclusive of the taxes payable and the petitioner therefore took a calculated decision to submit its price bid, considering all possibilities and eventualities of any change in the tax structure.

- 13** Clause 2.14.A as well as Clause 11.2 clearly contemplate that the contractor shall quote the price for the work, considering the prospective change in the tax structure, if any. The petitioner accepted the terms and conditions of the tender document and accordingly submitted his bid. The petitioner today cannot be permitted to allege that introduction of the GST regime after 01.07.2017 was not contemplated by the petitioner and therefore any payment of tax made by the petitioner under the GST regime ought to be refunded to the petitioner. The petitioner further alleges that the contract awarded to the petitioner was in the nature of a works contract and such a contract would necessarily mean to be a service contract for which GST was being paid as service tax. The entire contention made by the petitioner is wholly misconceived and absolutely misplaced. The GST paid by the petitioner after 01.07.2017 would amount to change in the existing tax structure as provided for under the tender document. The petitioner cannot allege that the GST paid for the petitioner for the work awarded is service tax. Before the introduction of GST prior to 01.07.2017, the petitioner was paying various taxes under different heads and nomenclature. GST replaced the said taxes under different heads and nomenclature. GST paid by the petitioner, therefore cannot be said to be service tax as is alleged by the petitioner. Change

in the existing tax structure would not be limited to a change in the rate of tax as is alleged by the petitioner. On the contrary, 'change in the existing tax structure would contemplate within its ambit change in the tax regime or introduction of any new tax etc. The petitioner cannot allege that 'change in the existing tax structure would be limited only to variation in the rate of tax and not to change in tax regime. The phrase 'change in the existing tax structure' shall have a wide connotation and would contemplate within its sweep, the present situation wherein there is a change in the tax regime. Interpretation, as is proposed by the petitioner would lead to undue enrichment to the petitioner since under such a circumstance, the petitioner would be absolved from payment of any tax under the GST regime, though the rate quoted by the petitioner was inclusive of all taxes with any variation. The effort by the petitioner is to claim refund of the entire tax paid with the petitioner, which cannot be accepted. The petitioner participated in the tender process as a prudent business enterprise and thus cannot be permitted to raise any argument to avoid levy of taxes. The petitioner cannot allege hardship towards payment of taxes.

- 14** It is next submitted by Mr. Das that the petitioner has alleged that the respondent has accepted the claim of the petitioner seeking refund of GST. The said allegation is emphatically denied as the respondent did not ever accept the request made by the petitioner for refund of GST. On the contrary, the request made by the petitioner for refund of GST was denied vide order dated 21.12.2017, which though have been assailed by the petitioner in the instant petition, but not placed on record. The petitioner has also objected to the claim of ITC by the respondent without any basis. Claim of ITC by the respondent is a matter as between the respondent and the taxing agencies. The petitioner cannot

raise any objection with regard to the ITC claimed by the respondent since the payment made by the respondent towards the work executed by the petitioner according to the agreement as between the petitioner and the respondent is inclusive of taxes (since the rate quoted by the petitioner was inclusive of taxes payable) and therefore the respondent is entitled to claim ITC in accordance with the extant rules. The issue, whether the answering respondent is entitled to ITC or not cannot be a ground for the petitioner to claim refund of the GST paid by the petitioner. The entire writ petition as has been preferred by the petitioner is to interpret the terms of the contract in the manner as is deemed appropriate by the petitioner and a declaration in this regard is being sought by the petitioner from this Hon'ble Court.

- 15** Mr. Das submits that writ jurisdiction cannot be invoked for the purpose of interpretation of the terms of a private contract between the parties executed in furtherance of a commercial transaction. The contract specifically contain the modality, mechanism and remedy for any such dispute between the parties. A writ petition invoking the extraordinary jurisdiction of this Hon'ble Court is not a remedy since there is no public law element involved. The dispute as espoused by the petitioner is a purely contractual dispute which need to be agitated in arbitration, as provided for under the terms of the contract. Moreover, the instant dispute involves complex questions of disputed facts and there is no reason why the settled legal position of exhausting the alternate remedy need not be abided by the parties. The instant writ petition is therefore not maintainable. Reference of various judgments made by the petitioner is of no assistance as they are not at all applicable to the present facts and circumstances of the case.

- 16** We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 17** One of the grounds raised by the learned counsel for the petitioner is that Section 142(10) of the CGST Act 2017 specifically addresses contracts entered into prior to the implementation of GST, providing those supplies made (supply of services) post GST shall be taxed under the new regime. Further, the saving provision under Section 174 of the CGST Act safeguards rights and obligations accruing under the erstwhile regime. Therefore, narrow interpretation cannot be adopted to deny the petitioner its statutory right to recover GST in respect of supplies made (supply of services) after the introduction of GST.
- 18** There is no dispute that clause 2.14.A of the agreement is in relation to the taxes and 'Note' appended thereto clearly states that service tax will not be applicable in this tender and if applicable, then the same will be reimbursed by the CGHB.
- 19** Mr. Das has drawn attention to clause 11.2 of the agreement which states that all duties taxes and other levies payable by the contractor under the contract or for any other cause, shall be included in the total tender price submitted by the tenderer and any variation during execution in above duties / taxes / other levies not be considered. As such, it is for the petitioner to bear any taxes and the petitioner cannot claim that the respondent since has availed input tax credit, hence, the same should be reimbursed to the petitioner. The claim whatsoever the petitioner is making, arises out of the terms of the contract and any dispute with respect to the same could be resolved under clause 1.21 which provides for arbitration clause, however, the same is disputed by the learned counsel for the petitioner stating that the dispute with relation to tax cannot be adjudicated through arbitration.

- 20** According to Mr. Rastogi, the dispute is public law in nature and not a private contractual claim. We are in complete disagreement with the said submission as the dispute itself arises out of a contract between the petitioner and the respondent-CGHB and any contract between two parties are restricted to them only and not applicable universally to all. Any financial strain or consequential losses to any party due to withholding of any dues by another party cannot be a ground for bypassing the alternate remedy available to it.
- 21** It is no longer *res integra* that disputed question of fact cannot be decided in a writ petition. It is needless to say that every action of State or its instrumentality, which is illegal, in contravention of the prescribed procedure, unreasonable, irrational or mala fide is open to judicial review. Every executive or administrative action of the State or other statutory or public bodies, legally treated to be authority, which is violative of fundamental rights or any statute, is open to judicial review. However, a disputed question of fact relating to ownership of particular plot of land, a private dispute between two persons relating to violation of contractual agreement, or the terms of contract by one party do not come under the scope of judicial review.
- 22** On careful reading of the arbitration clause, it clearly provides that 'arising out of or relating to contract' and the claim of the petitioner for reimbursement of the service tax also arises out of contract and as such, the said dispute could be resolved through arbitration mechanism. The claim of the petitioner for reimbursement of the GST amount is frivolous and not based on any sound reasons. The contractual dispute which essentially is a money dispute and the since the claim made by the petitioner herein is being disputed by the respondent-CGHB, the same cannot be adjudicated by this Court as it is well settled that a writ court

would not come for rescue of a party if the petition involves disputed questions of facts. The petitioner has the remedy to approach the competent jurisdictional civil court for realisation of any amount which arises out of the contractual obligations. The petitioner has not pursued diligently the alternative remedy that is available to it.

23 As a result, this petition being devoid of merit, is accordingly **dismissed**.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

One of the self-imposed restrictions on exercise of power under Article 226 of the Constitution of India that has evolved through judicial precedents is that the Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available.