Incremental GST burden on pre-GST works contracts is recoverable only from the contracting employer and not from the State or tax authorities

The Hon'ble Karnataka High Court in ***State of Karnataka & Ors. v. Unique Constructions & Ors. [Writ Appeal No. 615 of 2025 (GM-RES) dated June 10, 2026]*** partly allowed the appeal filed by the State of Karnataka and held that reimbursement of incremental GST paid by contractors pursuant to transition from the KVAT regime to the GST regime can be claimed only against the concerned employer under the works contract and not against the State Government or the tax authorities. It was further held that the liability to pay GST is a matter of statutory prescription which cannot be altered by contractual arrangements and therefore, no directions could be issued permitting filing of revised returns beyond statutory timelines or waiving interest, penalty and limitation prescribed under the GST law.

Facts:

M/s. Unique Constructions and other contractors ("**the Respondents**") were registered under the Karnataka Value Added Tax Act, 2003 ("**the KVAT Act**") and obtained registration under the GST regime with effect from July 01, 2017.

The Respondents had entered into works contracts/composite supply contracts with the State of Karnataka and its agencies ("**the Appellants/Employers**") prior to and around the rollout of GST. The contracts fell in three categories – (a) tenders called and agreements entered prior to July 01, 2017 during the VAT regime at the then prevailing Schedule of Rates ("**SR**"); (b) tenders called prior to July 01, 2017 but agreements entered on or after the said date with the old SR; and (c) tenders invited after July 01, 2017 but contracts entered under the SR prevailing prior to July 01, 2017. The agreements expressly provided that the rates quoted by the contractors shall be deemed to be "inclusive of sales and other taxes".

The Respondents contended that since the rates quoted were based on the pre-GST SR, the same did not factor the element of GST and with the introduction of GST from July 01, 2017, their tax liability had increased. Accordingly, they called upon their respective Employers to reimburse GST at the rate of 12% and 18% paid over and above the erstwhile VAT liability.

The Ld. Single Judge, following the earlier decision in ***Sri Chandrashekaraiah and Others v. State of Karnataka [W.P. No. 9721 of 2019 and connected cases dated April 11, 2023],*** allowed the writ petition and directed the concerned respondents to reimburse the GST amount as indicated in the representations within six weeks ("**the Impugned Order**"). The directions so incorporated, inter alia, permitted the contractors to file returns/amended returns for the period after July 01, 2017 without insisting on interest, penalty or limitation and restrained the GST authorities from taking precipitative action.

Being aggrieved, the Appellants preferred a writ appeal contending that directions permitting filing of GST/amended returns beyond statutory timelines and waiver of interest, penalty and limitation were impermissible and that the State was not liable to reimburse the differential tax, which liability, if any, was confined to the Employer under the contract.

Issue:

Whether the direction for reimbursement of incremental GST on works contracts executed under the pre-GST Schedule of Rates can be enforced against the State Government and the tax authorities and whether directions permitting filing of revised returns beyond statutory timelines with waiver of interest, penalty and limitation are sustainable under the GST law?

Held:

The Hon'ble Karnataka High Court in ***State of Karnataka & Ors. v. Unique Constructions & Ors.*** held as under:

- **Observed that** the dispute as to whether the writ petitioners would be entitled to reimbursement of incremental tax paid or payable by them on account of the levy of GST is strictly a matter between the writ petitioners and the Employers with whom they had entered into a contract and the contract between the parties would not alter the statutory scheme for the levy of GST.

- **Noted that** the liability to pay GST, whether under the CGST Act, the SGST Act or the IGST Act, is required to be determined strictly in accordance with the provisions of the relevant statute and the question of levy, assessment, recovery and enforcement of GST is a matter of statutory prescription.

- **Held that** no directions could be issued permitting the filing of any revised returns contrary to the provisions of the statute and the plenary directions waiving penalty, interest under the GST Acts or the limitation for filing returns/revised returns are unsustainable.

- **Further held that** since the dispute raised was confined to whether the Employer was required to reimburse the incremental tax, no directions could be issued to the tax authorities regarding the levy, assessment and collection of tax, penalty or interest.

- **Directed that** the direction to reimburse the tax is to be construed as a direction only to the concerned Employer and not to the tax authorities and accordingly, set aside the Impugned Order to the extent of any directions issued to the tax authorities/State.

Our Comments:

Section 9 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") levies tax on the supply of goods or services, and in terms of Para 6(a) of Schedule II to the CGST Act, works contracts as defined under Section 2(119) are treated as a supply of services. The liability to discharge GST on works contract services squarely rests on the contractor as the supplier, and such statutory liability operates irrespective of the commercial terms agreed between the contractor and the employer. Equally, Section 142(10) of the CGST Act clarifies that goods or services supplied on or after the appointed day in pursuance of a contract entered prior thereto are liable to tax under the GST regime.

On the returns front, the GST law consciously does not provide for revision of returns. The proviso to Section 39(9) of the CGST Act permits rectification of omissions or incorrect particulars only up to November 30 following the end of the financial year or the furnishing of the annual return, whichever is earlier, while interest under Section 50 and late fee under Section 47 of the CGST Act flow automatically from the statute. The present ruling rightly underscores that these statutory prescriptions cannot be diluted through judicial directions in a dispute that is essentially contractual in nature.

The decision is in line with the settled position laid down by the Hon'ble Supreme Court in ***Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [(2012) 5 SCC 306]***, wherein it was held that while the statutory liability to pay tax to the exchequer remains on the assessee, the burden of tax can always be shifted by way of contract, and any dispute regarding such shifting of burden is a matter inter se the contracting parties with which the tax department has no concern.

Notably, in ***Sri Chandrashekaraiah and Others v. State of Karnataka [W.P. No. 9721 of 2019 dated April 11, 2023]***, the Karnataka High Court had laid down a detailed mechanism requiring the works to be bifurcated into pre-GST and post-GST components, the KVAT element to be deducted from the pre-GST SR, applicable GST to be added, input tax credit to be set off, and the resultant "tax difference" on the balance works to be reimbursed by the concerned employer, including through supplementary agreements. Similar relief directing government departments to bear the differential tax burden on works contracts straddling the transition has been granted by various High Courts. The present Division Bench ruling does not disturb that contractor-friendly framework; it merely delineates its boundary by clarifying that the framework binds only the contracting employer and cannot travel into the domain of the GST administration.

The takeaway for contractors executing government works priced on pre-GST Schedule of Rates is that the remedy for the incremental GST burden lies against the employer through representations, supplementary agreements, arbitration or civil/contractual remedies, and not against the GST authorities. Contractors must continue to discharge GST, file returns and pay interest strictly within the statutory framework, as writ courts will not rewrite the statutory timelines, or waive interest, penalty or limitation, in aid of a contractual reimbursement claim.

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