Case Citation: (2026) taxcode.in 1702 HC

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 5TH DAY OF OCTOBER 2026 / 13TH ASWINA, 1948

WA NO. 1845 OF 2026

AGAINST THE JUDGMENT DATED 17.03.2026 IN WP(C)

NO.38282 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/S:

1 STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, SCHEDULED CASTES/SCHEDULED TRIBES DEVELOPMENT SECRETARIAT, MUSEUM-NANDAVANAM ROAD, NANDAVANAM, VIKASBHAVAN, THIRUVANANTHAPURAM, PIN - 695033

2 SPECIAL OFFICER,
GOVERNMENT MEDICAL COLLEGE, YAKKARA,
KUNNATHURMEDU P.O., PALAKKAD, PIN - 678013

3 CHIEF ENGINEER (BUILDINGS)
PUBLIC WORKS DEPARTMENT, PUBLIC OFFICE COMPLEX,
MUSEUM P.O., THIRUVANANTHAPURAM, PIN - 695033

4 SUPERINTENDING ENGINEER
PUBLIC WORKS DEPARTMENT, PWD BUILDINGS, NORTH CIRCLE, PWD COMPLEX, MANACHIRA, KOZHIKODE., PIN - 673001

BY ADVS.
RINOY VINCENT, GP

RESPONDENT/S:

www.taxcode.in

**MARY MATHA INFRASTRUCTURE PRIVATE LIMITED,
AGED 50 YEARS
BUILDING NO. XVII/180, MARYMATHA SQUARE, ARAKUZHA ROAD, MUVATTUPUZHA, ERNAKULAM, REPRESENTED BY ITS DIRECTOR, SIBU CHERIAN, PIN - 686661**

**BY ADVS.
SHRI. SANTHOSH MATHEW, SR.
SHRI.SHINTO MATHEW ABRAHAM
SMT.VEENA RAVEENDRAN
SRI.ANIL SEBASTIAN PULICKEL
SHRI.MATHEW NEVIN THOMAS
SMT.LEAH RACHEL NINAN
SHRI.KARTHIK RAJAGOPAL
SMT.APARNNA S.
SHRI.NOEL NINAN NINAN
SHRI.ADEEN NAZAR
SHRI.ROHAN MATHEW
SMT.SAIRA SUSAN JOJOE**

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.10.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

www.taxcode.in

J U D G M E N T

Dated this the 5th day of October, 2026

Soumen Sen, C.J.

Heard Mr. Rinoy Vincent, learned Government Pleader appearing for the appellants and Mr. Santhosh Mathew, learned Senior Advocate appearing for the respondent.

2. The State is aggrieved by the judgment dated 17th March 2026 in W. P. (C) No. 38282 of 2023. The learned Single Judge, in a writ petition preferred by the contractor alleging non-payment of the full contractual amount due to the petitioner, allowed the said writ petition and directed the appellants to take effective and immediate steps to reimburse the GST amount paid by the petitioner in terms of the observations made in the said judgment. Being aggrieved, the State has preferred this appeal.

3. The appellants, for the purpose of construction of a hospital block (consisting of a Ward, OP and OPD) at the Institute of Integrated Medical Sciences, Palakkad Medical College, invited tender in which the writ petitioner

participated as a successful bidder. The bid was accepted at four percent below the estimated rate and the formal tender agreement was executed between the writ appellant, the writ petitioner and the Superintending Engineer, PWD, on 30th January 2017. The dispute arises with regard to the GST payable to the petitioner on the BoQ that was executed by the writ petitioner. It is not in dispute that the contract has been successfully executed.

4. The tender document and the formal agreement dated 30th January 2017 are all prior to the coming into force of the Goods and Services Tax. The said Act was notified by the Government of India with effect from 1st July 2017. However, prior to the coming into force of the appropriate rules, the tender and the agreement were executed by the parties. In the light of the aforesaid, Clauses 3.10.3 and 3.10.4 are required to be considered. The said Clauses are reproduced below:-

> "3.10.3. All duties, taxes, transportation, loading, unloading, octroi payable by the Contractor under the Contract, or for any other cause shall be included in the rates, prices and the total Bid Price submitted

by the Bidder. All incidentals, overheads, leads, lifts, carriages etc. as may be attendant upon for execution and completion of items, shall also be included in the rates, prices and total Bid Price submitted by the bidder.

3.10.4. The rates and prices quoted by the Bidder shall be fixed for the entire duration of the contract and shall not be subject to variations on any account except to the extent of variations allowed as per the conditions of the contract indicated in the bidding document."

5. We referred to the said Clauses in view of the submission made on behalf of the writ appellant that irrespective of the GST regime, it has been clearly understood that all future taxes in the form of GST or otherwise would be applicable wherever an issue might arise with regard to reimbursement or refund of the tax paid. The learned counsel also referred to Clause 4.4.1 to show that an item rate contract should also include all the applicable taxes including Work Contract Tax, Value Added Tax, duties, octroi, levies etc. as may be applicable to the said contract.

6. The writ petition was filed as the Finance Department

raised objections with regard to the claim for refund of the GST paid during the execution of the contract. In the writ petition, the learned Single Judge has referred to the stand of the owner of the project, i.e. the 2nd respondent, as also the PWD with regard to the liability to pay GST under the contract. All the authorities have agreed that the writ petitioner is entitled to refund of GST. Moreover, the minutes of the meeting held by the Minister of SC/ST Development Department reflect the recommendations of the Chief Engineer and Executing Engineer regarding the reimbursement of GST to the petitioner. Similarly, the consequential decisions involving the Additional Chief Secretary, the Secretary of the Public Works Department, the Special Officer of the Government Medical College, Palakkad, the Director of SC/ST Department and the Chief Engineer, PWD Buildings, all acknowledge and admit the validity of the contractor's request for GST reimbursement. It is clear from Section 15 of the Central Goods and Services Tax Act, 2017, that it is in the nature of an indirect tax. Admittedly, the petitioner could not have factored its price taking into

consideration the GST, which was admittedly non-existent. The liability of GST arises only after it is notified by the Government of India with effect from 1st July 2017.

7. Pursuant to the said notification, the State of Kerala issued a notification dated 14th December 2017 where it was made incumbent that in the tenders to be submitted by the contractors, the tender amount should exclude GST. However, prior thereto, there was no such clause, nor could there be any pertaining to GST. However, as rightly pointed out and submitted by the learned counsel for the appellants and also agreed to by the learned Senior Advocate appearing for the writ petitioner, the applicable VAT was to be paid under the contract and the differential amount between the VAT and the GST, as may be applicable to the goods supplied after 14th December 2017, shall be taken into consideration for the purpose of refund of GST.

8. In view thereof, we dispose of the writ appeal by directing the 1st appellant, Additional Chief Secretary to the Government, to recalculate the amount required to be disbursed in terms of this judgment within eight weeks from

date. The judgment of the learned Single Judge is clarified to the aforesaid extent.

Sd/-
SOUMEN SEN
CHIEF JUSTICE

Sd/-
SYAM KUMAR V. M.
JUDGE

Eb