

**GOVERNMENT OF KERALA****Abstract**

Fisheries Department - Judgment of the Hon'ble High Court of Kerala dated 14.08.2024 in WP (C) No. 28675 of 2024 filed by Mr. Namshad A., Contractor, HE Division, Kasaragod - Complied - Orders issued.

FISHERIES & PORTS (C) DEPARTMENT

G.O.(Rt)No.485/2025/F&P Dated,Thiruvananthapuram, 05-07-2025

- Read: 1. Order No:D1/755/18/EE dated 30.08.2018, Order No.D1/684/18/EE dated 30.08.2018, Order No.D1/752/2018/BE dated 01.10.2018 & Order No.D1/479/2018/EE dated 01.10.2018 of the Executive Engineer, Harbour Engineering Division, Kasargod.
2. Agreement No.13/2018-19/EE/HED/KGD dated 30.08.2018, Agreement No.14/2018-19/EE/HED/KGD dated 30.08.2018, Agreement No.22/2018-19/EE/HED/KGD dated 01.10.2018, & Agreement No.21/2018-19/EE/HED/KGD dated 01.10.2018 executed between Executive Engineer, Harbour Engineering Division, Kasargod and the contractor Mr.Namshad A.
3. Representation dated 20.05.2024 from Mr.Namshad A, Jaseela Manzil, Star Nagar, Bevinje, Kasaragod.
4. Judgement of the Hon'ble High Court of Kerala dated 14.08.2024 in WP (C) No. 28675 of 2024.
5. Letter No. HECE/743/2024-A5 dated 30.10.2024 from the Chief Engineer, Harbour Engineering Department, Thiruvananthapuram.

ORDER

Mr. Namshad A, Jaseela Manzil, Star Nagar, Bevinje, Thekkil Ferry P.O., Kasargod, an A Class Contractor submitted bids in response to the tender notifications for road works issued by the Executive Engineer, Harbour Engineering Division, Kasargod. Being the lowest bidder certain works were awarded to Mr. Namshad by the Executive Engineer, Harbour Engineering Division, Kasargod vide orders read as 1st paper above. These orders were

issued by the Executive Engineer on the basis of agreements read as 2nd paper above which were entered into by the said contractor.

2) On satisfactorily completing the works comprised in agreements read as 2nd paper above, while disbursing the admitted bill amount pertaining to these works, a total sum of Rs.17,89,369.08/- (Rupees Seventeen lakhs eighty nine thousand three hundred sixty nine and paise eight only) was charged against the contractor towards Central GST and State GST which works out to Rs.8,94,684.54/- (Rupees Eight lakhs ninety four thousand six hundred eighty four and fifty four paise only) each and the petitioner had duly remitted the said amount.

3) Further the Contractor vide his representation read as 3rd paper above approached Govt for reimbursement of the said Central and State GST amounts paid by him. After his plea having not been favourably accepted by the Harbour Engineering Department, he approached the Hon'ble High Court of Kerala through WP (C) 28675/2024.

4) The Hon'ble High Court of Kerala vide judgment read as 4th paper above, disposed of the writ petition by directing the first respondent ie the Secretary, Fisheries Department to consider Ext.P14 representation read as 3rd paper above in accordance with the law, after affording an opportunity of hearing to the petitioner.

5) In compliance with the judgment dated 14.08.2024 of the Hon'ble High Court of Kerala in WP(C) No. 28675/2024, a personal hearing was held on 10.12.2024. The petitioner's representative, along with officials from the Harbour Engineering Department, attended the hearing.

6) In the hearing the petitioner stated that the work contracts awarded to him as per the orders read as 1st paper above were executed satisfactorily, and the agreements were signed prior to the implementation of GST. It was further contended that GST paid by him amounting to Rs. 17,89,369.08 is reimbursable based on Government Circulars including Circular No. 90/2017/Fin. dated 14-12-2017, 18/2019/Fin. dated 01-03-2019, G.O.(P) No.173/2019/Fin. dated 22-12-2019 and Circular No. D1/60/2024-PWD dated 07-05-2024 and requested to consider the reimbursement in view of the orders issued by both the Central and State Governments.

7) Further the Harbour Engineering Department, argued the following:

- The contracts were awarded based on DSR-2016 and the estimates were approved prior to the implementation of GST.
- The Notice Inviting Tender (NIT) was issued in July/August 2018, i.e., after GST implementation.
- Clause 43 of the agreement specifically states that the contractor is liable to pay applicable taxes, and changes in tax rates shall not affect contract value.
- The Bill of Quantities (BoQ) clearly stated “Total Amount with Tax”, indicating the contractor was expected to factor in GST.

5) Government have examined the matter in detail based on the arguments raised by the petitioner, concurred with the views of the Harbour Engineering Department and also on the basis of the observations of the Hon'ble High Court. It has been found that, since the BoQ and agreement explicitly included taxes and the tender was issued after the implementation of GST, the contractor was aware of the GST regime and quoted the rates accordingly.

6) In the above circumstances, Government have decided to reject the Ext.P 14 representation dated 20/05/2024 submitted by the petitioner for reimbursement of GST amounting to Rs. 17,89,369.08/-, for the following reasons:

- The contracts were awarded based on DSR-2016 and the estimates were approved prior to the implementation of GST
- Clause 43 of the agreement specifically states that the contractor is liable to pay applicable taxes, and changes in tax rates should not affect the agreed contract rate.
- The Bill of Quantities (BoQ) clearly stated “Total Amount with Tax”, indicating the contractor was expected to factor in GST.
- Circular No. D1/60/2024-PWD dated 07-05-2024 does not apply to the Harbour Engineering Department and appears to have been issued without concurrence of the Finance Department.

7) The direction of the Hon'ble High Court of Kerala, as per the Judgement read as 2nd above, is complied with accordingly.

(By order of the Governor)
ABDUL NASAR B I A S
SPECIAL SECRETARY

To:

Shri Namshad A, Jaseela Manzil, Star Nagar, Bevinje, Thekkil Ferry P.O,
Kasaragod.

The Advocate General, Kerala, Ernakulam(with Covering Letter)

The Chief Engineer, Harbour Engineering Department,
Thiruvananthapuram.

The Principal Accountant General, (Audit)/(A&E), Kerala,
Thiruvananthapuram.

Finance(W&CD)Department (Vide 3033087/WCD-2/20/2025-Fin dated
24.05.2025).

The Deputy Director II, Web and New Media, I&PRD,
Thiruvananthapuram.(For uploading in the Government website).

Stock file/Office copy. (File no. C3/175/2024/F&P).

Forwarded /By order

Section Officer