

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP(C) No. 932/2021
WP(C) No. 933/2021
WP(C) No. 934/2021
WP(C) No. 1379/2021
WP(C) No. 1656/2021
WP(C) No. 1818/2021
WP(C) No. 1819/2021
WP(C) No. 1820/2021
WP(C) No. 494/2022
WP(C) No.1274/2023
WP(C) No. 1041/2021**

Reserved on 16.10.2023

Pronounced on 03 .11.2023

Vishal Verma age 41 years son of Sh. Sham
Sunder Verma resident of Poonch Sole
Proprietor M/S Kiran Constructions Main
Bazar, Surankote District Poonch J&K, along
with connected matters

..... petitioners (s)

Through :- Mr. Arun Dev Singh Advocate

V/s

.....Respondent(s)

- 1 UOI th. Secretary Defence 101-A South Block New Delhi
2. Engineer-in-Chief's Branch Military Engineering Services Kashmir House,
Rajaji Marg New Delhi.
3. Chief Engineer, Western Comand PIN 908543 care of 56 APO
4. HQ Chief Engineer Udhampur Zone
5. PCDA Northern Command, Narwal Pain Satwari.
6. HQ CWE Rajouri
7. Garisson Engineer 881 EWS C/o 56 APO
- 8 Assistant Garrison Engineer Care of 56 APO.

Through :- Mr. Vishal Sharma DSGI

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

ORDER

The issue raised in these petitions has already been considered and decided vide our judgment of even date, the operative portion whereof reads thus:

“20 It is trite law that in view of the provisions of Article 265 of the Constitution of India, no tax can be levied or collected except by the authority of law. The law here would mean only a statutory law or the Act of Legislature. The tax can be levied or collected only either by an Act of Legislature or the subordinate legislation framed thereunder. Any tax levied under the executive authority of the State or by any other statutory or non-statutory authority like the GST Council is not a tax levied or collected under an authority of law. The legal position in this regard is well settled.

21. The conduct of the parties to the contract i.e the petitioner and the respondents in the instant case is governed by the contract entered into between the parties and, therefore, none of the parties can escape from the compliance of terms and conditions of the contract. The quoted terms and conditions of the contract do not leave any manner of doubt that any decrease in the percentage rate of service tax on the contract value in question with reference to the prevailing rate on the last due date for receipt of tenders is required to be refunded by the petitioner to the respondents and in case there is increase in the percentage rate of such tax, it is the obligation of the respondents to reimburse the differential amount to the petitioner.

22 Despite great persuasion, learned counsel for the petitioner could not demonstrate that the prevailing rate on the last date fixed for receipt of tenders in question was 12%. Whether the petitioner took into account the rate of service tax as 12% being misled by the decision of the GST Council or not, is not a matter relevant to the point in issue. The plea of the petitioner that the rate of service tax which was taken into account by the petitioner at the time of submission of bid was 12% and not 18% will lose its significance in view of the clear stipulation in the contract agreement that the rates quoted by the petitioner shall be inclusive of the taxes directly related to contract value as

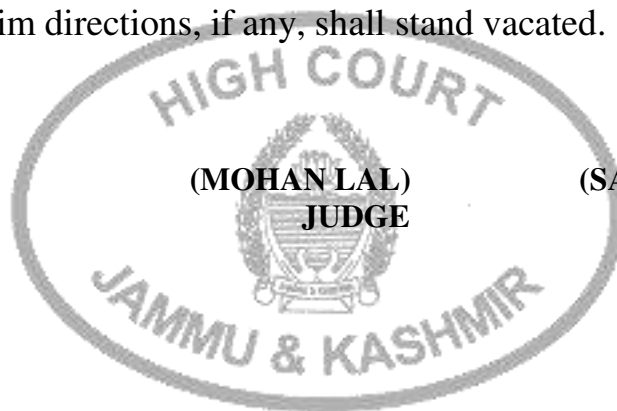
prevailing on the last due date for receipt of tenders. It is in reference to this date the respondents were to determine increase or decrease in percentage rates of taxes directly related to contract value. The consequences of increase and decrease were clearly stipulated in special condition No. 49 of the contract agreement.

23 Viewed from any angle, we find no merit in this petition and the same is, accordingly, dismissed”.

The cases of the petitioners in these petitions are squarely covered by the judgment dated 03.11.2023 passed today in WP(C) No. 170/2021 and, therefore, what is said in the said judgment shall apply, on all fours, to these cases as well. These writ petitions are, accordingly, dismissed in terms of the judgment (supra)

Interim directions, if any, shall stand vacated.

Jammu
03.11.2023
Sanjeev



(SANJEEV KUMAR)
JUDGE