

GAHC010155252023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4004/2023

KARUNA DEURY
SON OF LATE PREMANANDO DEURY,
RESIDENT OF VILLAGE- SIMLA,
P.O.- KAKLABARI AND P.S. SIMLA,
DIST.- BAKSA, PIN- 781330.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT,
DISPUR, GUWAHATI-06.

2:THE BODOLAND TERRITORIAL REGION
REPRESENTED BY THE PRINCIPAL SECRETARY
KOKRAJHAR.

3:THE SECRETARY
MARKET AND FAIRS DEPARTMENT
BTC
KOKRAJHAR.

4:THE JOINT SECRETARY
MARKET AND FAIRS DEPARTMENT
BTC
KOKRAJHAR.

5:BLOCK DEVELOPMENT OFFICER
JALAH DEVELOPMENT BLOCK
JALAHGHAT.

6:FINANCE AND TAXATION DEPARTMENT
REPRESENTED BY THE COMMISSIONER OF STATE TAXES

DISPUR
GUWAHATI- 781006.

7:DISHNATH BASUMATARY
SON OF LATE DEBAN BASUMATARY

RESIDENT OF VILLAGE- BHEHGURI

P.S.- SIMLA
DISTRICT- BAKSA

PIN- 781330

Advocate for the Petitioner : MR R SINGHA

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

12.02.2024

1. Heard Mr. R. Singha, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned counsel appearing for the BTC, Mr. K. Sarma, learned counsel for the respondent No.7 and Mr. B. Choudhury, learned Standing Counsel, Finance and Taxation Department.

2. The petitioner participated in a competitive bidding process initiated by the respondent BTC authorities for settlement of a market named 'Simla Bazar' for the year : 2023-2024, pursuant to a Tender Notice dated 24.05.2023, issued by the respondent no. 5. The last date of submission of tenders was 17.06.2023. 4 [four] nos. of bidders including the petitioner and the respondent no. 7, participated in the said bidding process for settlement of Simla Bazar/Market. As

per Clause 8 of the Tender Notice dated 22.05.2023, a bidder had to submit a number of documents/certificates along with the bid. One of such documents was GST Clearance Certificate, if applicable.

3. It is the case of the petitioner that in the Comparative Statement prepared for settlement of the Simla Market by the respondent no. 5, the respondent no. 7 was shown to have offered the highest bid value of Rs. 18,07,068/- and the petitioner was shown as the 2nd highest bidder with his offered bid value of Rs. 16,58,058/.

4. Mr. Singha, learned counsel for the petitioner has submitted that though the Comparative Statement had mentioned that the respondent no. 7 had duly submitted a GST Clearance Certificate, but the petitioner had, later on, come to know that the GST Clearance Certificate of the respondent no. 7 had been cancelled w.e.f. 19.02.2021 and the said fact is reflected in the website of the GST Portal. Mr. Singha has, thus, submitted that the respondent no. 7 had submitted a fake GST Clearance Certificate. Mr. Singha has submitted that the respondent BTC authorities have, in the meantime, settled the Simla Market in favour of the respondent no. 7 by an Order of Settlement dated 07.07.2023, for the period from 01.07.2023 to 30.06.2024. It is contended that as the respondent no. 7 had failed to submit a proper GST Clearance Certificate, submission of which was mandatory, the bid of the respondent no. 7 ought to have been declared as a defective one and since the petitioner offered the 2nd highest bid value and his bid was compliant to the conditions of the Tender Notice, the market should be settled with the petitioner.

5. Mr. Choudhury, learned Standing Counsel, Finance and Taxation

Department had produced a Communication bearing no. CTS-51/2023[34]/75 dated 26.07.2023 issued by the office of the Commissioner of Taxes, Assam during the pendency of this case. As per the said Communication, the GSTIN: 18AVRPB0604M1ZI in the name of Dishnath Basumatary [the respondent no. 7] was cancelled by the jurisdictional officer on 09.02.2021 w.e.f. 19.02.2021. The Communication has further indicated that the order of such GSTIN cancellation was preceded by a show cause notice.

6. Mr. P. Nayak, learned counsel appearing for the BTC, has brought the original records pertaining to the bids/quotations of all the participants in the NIT, which includes the bid of respondent No.7. The bid documents of the respondent No.7 includes the respondent No.7's GST Certificate showing that GSTIN No. 18AVRPB0604M2ZH had been issued on 04.06.2023. Mr. Nayak submits that the respondent No.7 had submitted a valid GST Certificate and as per Sections 22 & 23 of the Central GST Act, 2017, depending on the taxable supply of goods and services, GST registration is compulsory. No GST certificate is necessary to be submitted along with the tenders/bids, in cases where the taxable supply of goods or services does not exceed Rs.10 lakhs for special category States and Rs.20 lakhs for the other States.

7. I have heard the learned counsels for the parties.

8. The issue pertains to whether the respondent No.7 had submitted the GST certificate, which was valid at the time of submission of his tender documents, in terms of Clause 8(f) of the Tender Notice, which requires each tenderer to submit "GST certificate, if applicable." In the present case, the Joint Secretary, BTC had submitted letter dated 29.09.2023 to the Superintendent of Taxes,

Nalbari, requesting for a verification report, with regard to whether the GST Registration Certificate No. 18AVRPB0604M2ZH of the respondent No.7 and GST Registration Certificate No.18AMHPD06481L2ZH of the petitioner were valid. In reply to the letter dated 29.09.2023, the Assistant Commissioner of State Tax, Nalbari sent a letter dated 06.10.2023, stating that GSTIN:18AVRPB0604M2ZH in the name of the respondent No.7 was valid as it was registered with effect from 04.08.2023. On the other hand, GSTIN: 18AMHPD06481L2ZH was an invalid GSTIN.

9. The letter dated 06.10.2024 issued by the Assistant Commissioner of State Tax has apparently made a mistake with the GSTIN No. of the petitioner due to the mistake committed by the Joint Secretary, BTC in his letter dated 29.09.2023, inasmuch as, the GSTIN number of the petitioner as reflected in his GST Certificate does not have the number "1" in between the number "8" and the letter "L", i.e., it is 18AMHPD0648L2ZH. However, the letters dated 29.09.2023 and 06.10.2023 show the petitioner's GSTIN number to be 18AMHPD06481L2ZH.

10. The above being said, there is a disputed question of fact, as the tender documents of the respondent No.7 in the official records shows that the GST Certificate of the respondent No.7 was issued on 04.06.2023. The Tender Notice was issued on 24.05.2023 and last date of submission of tenders was 17.06.2023. The market was settled with the respondent No.7 vide Settlement Order dated 07.07.2023. As such, the GST Certificate of the respondent No.7, which is a part of his tender documents, is a valid GST Certificate. Thus, the GST Certificate submitted by the respondent No.7 along with his quotation was valid, in terms of the said document. Accordingly, there can be no infirmity with

the decision of the State respondents in settling the market with the respondent No.7, unless the said GST certificate is a fabricated document.

11. There is another aspect of the matter, which has to be considered with regard to whether it was necessary for the respondent No.7 to submit a GST Certificate, inasmuch as, Clause 8(f) of the NIT provides that the GST Certificate has to be submitted, "if applicable."

12. Sections 22 and 23 of the Central GST Act, 2017 provides as follows-

"22. Persons Liable for Registration

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a

case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.-For the purposes of this section,-

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

23. Persons Not Liable for Registration

(1) The following persons shall not be liable to registration, namely:-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act."

13. Section 22 of the Central GST Act, 2017 provides that every supplier shall be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakhs rupees.

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakhs rupees. Section 23 provides the class of persons, who are not liable for registration under the Central GST Act, 2017.

14. As Assam is a special category State under the Central GST Act, 2017, the petitioner and the respondent No.7 are required to submit valid GST Certificates, as their bid value is above 10 lakh rupees.

15. The only question that remains is whether the respondent No.7 had submitted a valid GST Certificate along with his bid/quotation. As stated in the foregoing paragraphs, the petitioner had apparently submitted a valid GST Certificate. The Communication dated 26.07.2023 issued by the Commissioner of Taxes, Assam only reflects the fact that the GST Certificate of the respondent No.7, i.e., GSTIN: 18AVRPB0604M1ZI was cancelled on 09.02.2021 with effect from 19.02.2021. There is nothing with regard to when the respondent No.7's GST Certificate was revalidated. The letter dated 06.10.2023 issued by the Assistant Commissioner of State Taxes, Nalbari states that the GSTIN: 18AVRPB0604M2ZH of the respondent No. 7 was registered with effect from 04.08.2023. On the other hand, the GST Certificate of the respondent No.7, which was brought to the notice of this Court today, shows that the GST Certificate of the respondent No.7 was issued on 04.06.2023 and the number was GSTIN: 18AVRPB060M2ZH. The GSTIN numbers of the respondent No.7 in relation to all the GST certificates is reproduced below as follows:-

Sl. No.	Letter dated and issuing authority	GSTIN Number & Remarks
1	Letter dated 26.07.2023 issued by the Commissioner of Taxes, Assam	18AVRPB0604M1ZI GST Certificate was cancelled on 09.02.2021 w.e.f. 19.02.2021
2	Letter dated 06.10.2023 issued by the Assistant Commissioner of State Tax, Nalbari	18AVRPB0604M2ZH GST Certificate was registered w.e.f. 04.08.2023
3	GST Certificate submitted by respondent No.7 along with his tender/bid documents, which was produced in Court.	18AVRPB0604M2ZH GST Certificate had been issued on 04.06.2023

16. The above chart shows that different GSTIN numbers have been given to the respondent No.7, inasmuch as, the GSTIN No. in Sl. No. 1 is different from the numbers given in Sl. Nos. 2 and 3. The remarks column also shows that different dates relating to the GST Certificates pertain to cancellation, registration and date of issue. There is nothing common between any of the above.

17. As stated in the earlier paragraphs, the GST Certificate submitted by the respondent No.7 along with his tender documents, shows that it was a valid

GST Certificate and as such, there can be no infirmity with the State respondents accepting the same, while considering the bid of the respondent No.7. The same is however subject to the same not being a fabricated document. The letters of the Commissioner and Assistant Commissioner of Taxes dated 26.07.2023 & 06.10.2023 respectively, speak of the fact that the GST Certificates of the respondent No.7 had been cancelled in the year 2021 and that it was registered on 04.08.2023. However, the GST Certificate which is a part of the tender documents shows that GST Certificate of the respondent No.7 had been issued on 04.06.2023. The issuance of the GST certificate could not have been done prior to registration. One of the issues that has also cropped up and would have to be decided is, whether a person can have two GST registration numbers. Due to the disputed questions of facts involved in the present case, this Court is of the view that the said issue would have to be decided by the respondents No. 2 and 6.

18. Accordingly, the respondents No. 2 and 6 are directed to make an inquiry into the validity of the GST Certificate submitted by the respondent No.7 along with his tender documents. If it is found upon inquiry that the respondent 7 had submitted an invalid or fabricated GST Certificate, the settlement of the market with the respondent No.7 should be set aside by cancelling the Settlement Order dated 07.07.2023. The State respondents should thereafter take immediate steps to settle the market with the second highest bidder. The respondents No. 2 and 6 shall make their inquiry and take a decision on the same within a period of 1(one) month from the date of receipt of a certified copy of this order. They shall also give an opportunity of hearing to the parties herein, before taking a decision on the matter. Till a decision is taken by the respondents No. 2 and 6, the interim order dated 27.09.2023 shall remain in

force. The decision taken should also be communicated to the parties.

19. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant