IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3711 of 2015
Date of decision:2.3.2015

M/s Krishan Kumar Contractor ….Petitioner

VERSUS

Union of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arvind Kumar Yadav, Advocate for the petitioner.

*****

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to a communication dated 30.01.2015 (Annexure P-3) whereby representation of the petitioner in respect of his offer in response to tender of construction of pre-fab shelter was declined.

One of the terms and conditions of the tender was that the tenderer should disclose his Taxpayer Identification Number (TIN)/Central Sales Tax (CST) Number i.e. registration under the Haryana Value Added Tax Act, 2003 (for short 'Act') or under the Central Sales Tax Act, 1956. The tender of the petitioner has been rejected for the reason that the petitioner has not produced the TIN number and has also collected the demand draft of amount of earnest money. The extract from the communication dated 30.01.2015 reads as under:-

> "1. Kindly refer your Email dated 24 Jan 2015.
>
> 2. It is intimated that the terms and conditions to participate in the tendering process for construction of pre-fab were stipulated n the tender form issued to you. In part-II of the Tender Form, it was requisite requirement on part of the tenderer (s) to attach the

Registration Certificate of their firms. The participating firms were also required to mention their Tin No. in the tender form for Income Tax purpose.

3. The columns pertaining the above two issues were left blank in your tender form and the Tendering Board, to give a fair opportunity asked you to submit the same after opening the tender where all other tenderers were also present. Since you could not produce the Registration Certificate and Tin No. of your firm or agency, the tendering board was left with no other option but to reject the bid as your tender was not meeting the defined terms and conditions which were uniformly applicable to all other participants of the tender.

4. You have also collected the DD of your earnest money attached with your tender form on 23 Jan 2015 itself without any impliedly protest or disagreement. Therefore re-opening of the matter now is neither understood nor tenable and the same appears to be a afterthought action.

5. The above is for your information please."

The argument of learned counsel for the petitioner is that none of the departments of which the petitioner is executing works have insisted upon the TIN number, therefore, the requirement of TIN registration is not mandatory. It is also argued that the tender form does not specify the registration under the Act is a mandatory condition. Learned counsel for the petitioner points out that the respondents have communicated that TIN number is necessary only for Income Tax.

We do not find any merit in the arguments raised. It is the terms and conditions of each department as to whether the registration under the Act is required or not. In fact, the terms and conditions, as attached with the petition, does not make any of the condition as directory. It appears that the tenderers are required to respond to each of the conditions.

Learned counsel for the petitioner could not point out any provision of law that registration under the Act is not necessary such as the petitioner. The purpose of registration under the Act is for deduction of tax at source from the works contract for which tenders were invited. Not only the petitioner is not registered under the Act but the petitioner has also taken his earnest money back. In view thereof, the petitioner ceases to be a willing tenderer in response to the tender for construction of pre-fab shelter.

We find that inadvertent mistake in the communication will not confer any right as TIN number is a requirement of the Act whereas the Permanent Account Number is the requirement of the Income Tax Act, 1961.

Consequently, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

MARCH 2, 2015
'D. Gulati'

(LISA GILL)
JUDGE