Sr. No. 227

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

WP(C) No. 2183/2019 (O&M)
WP(C) No. 405/2020 (O&M)
WP(C) No. 516/2020 (O&M)
WP(C) No. 1591/2020 (O&M)
(Through Video Conferencing)

M/s Pardeep Electrical and Builder Pvt. Ltd. and another .....Petitioner(s)

Through:- Mr. V.R. Wazir, Sr. Advocate with
Mr. Abhishek Wazir, Advocate
in WP(C) No. 2183/2019
Mr. Sanjay Kakkar, Advocate
in WP(C) Nos. 405 & 516/2020
Mr. Ravinder Sharma, Advocate
in WP(C) No. 1591/2020

Vs

Union of India and others .....Respondent(s)

Through :- Mr. Vishal Sharma, ASGI

CORAM: HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

1. This order will dispose of a bunch of petitions bearing WP(C) No. 2183/2019 and WP(C) Nos. 405, 516 & 1591/2020. The issue raised in all the petitions is common.

2. Challenge has been made to the notices issued to the petitioners for recovery of differential amount of tax. It is on account of the fact that in the contract executed between the parties, it was mentioned that the contract value

offered by the bidders should include the taxes as existing on the last date for submission of bids. Any reduction in the rate of tax thereafter, was to be reimbursed by the contractor whereas any increase in the rate of tax thereafter, was to be paid by the contractee to the contractor.

3. It is further not in dispute that the rate of tax on the contract was 18 % as on the last date for submission of bids which was subsequently reduced to 12 %.

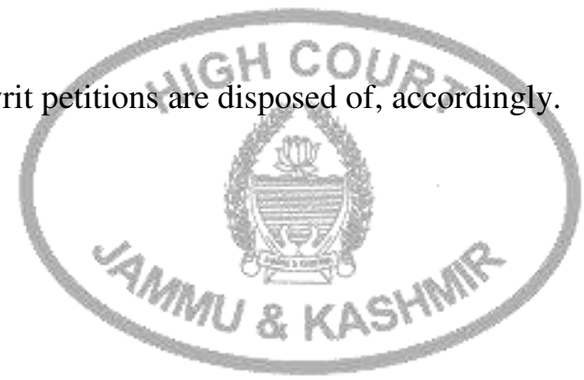
4. It was on account of the reduction in the rate of tax that notices were issued by the respondents to the petitioners for recovery of the differential amount of tax which according to them was included in the offer made by them.

5. The grievance raised by the petitioners is not that the amount of tax which has been reduced after the last date for submission of the tenders is not reimbursable by them. Only issue sought to be raised is that the demand notices have been issued without hearing the petitioners and the amount has been calculated unilaterally. The petitioners should have been afforded an opportunity of hearing so as to enable them to point out that the amount of tax as demanded from them is not due even after the reduction of the rates, if calculated properly. The liability is not in dispute. It is only the quantum.

6. Mr. Vishal Sharma, learned ASGI fairly submitted that if that is only the issue, the notices issued to the petitioners for payment of amount may be treated as a showcause notices to which the petitioners may respond and thereafter, the Garrison Engineer, will decide the amount of differential tax which was part of the contract value, to be recovered from the petitioners.

7. In view of the aforesaid fair stand taken by the learned counsel for the parties, the present petitions are disposed of by directing that notices issued to the petitioners which have been impugned in the present petitions directing them to deposit the differential amount of tax on account of reduction of rates after submission of bids, can be responded to by the petitioners on or before January 12, 2021. Whatever issues the petitioners want to raise regarding the calculation of the amount can be raised in their replies. No further time shall be granted for the purpose. They can appear before the Garrison Engineer concerned in his office on January 15, 2021 at 11:00 AM. The matters shall be considered by the Garrison Engineer after hearing the petitioners and fresh demand notices shall be issued within two weeks thereafter.

8. The writ petitions are disposed of, accordingly.



(SANJAY DHAR)
JUDGE

(RAJESH BINDAL)
CHIEF JUSTICE (ACTING)

Jammu
23.12.2020
SUNIL-I

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No

VIJAY KUMAR
2020.12.24 13:45
I attest to the accuracy and
integrity of this document