2025:BHC-NAG:10007-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 439 OF 2024

Altaf S/o. A Majeed Ahmed,
A/a – 59 Years, Occupation – Business,
R/o. 3-D, Anjuman Complex, Sadar
Nagpur – 440001. ….**PETITIONER**

….VERSUS….

1) The State of Maharashtra, Through
the Secretary, Revenue & Forest
Department, Mantralaya,
Mumbai – 400032.

2) The District Collector, Nagpur,
through the District Mining Officer,
Nagpur. ….**RESPONDENTS**

Shri A.S.Manohar, Advocate for petitioner.
Shri H.D.Marathe, AGP for respondents/State.

CORAM : ANIL S. KILOR AND
RAJNISH R. VYAS, JJ.

DATE : 18/09/2025

ORAL JUDGMENT (PER: ANIL S. KILOR, J.)

Heard both the parties.

2. In the present Writ Petition, the grievance of the petitioner is that though the petitioner quoted the rates

without Goods and Services Tax (GST) while participating in E-tender floated by the respondent no. 2 for sand mining from sand groups in Nagpur District and Transportation of mined sand to sand depot, depot creation and management, the respondents have treated the same including GST and deducting the GST amount from the amount payable to the petitioner. Therefore, a question which arises is whether the respondents are justifiable in deducting the amount of GST from the amount payable to the petitioner ?

3. The brief facts of the present case are as follows:-

The respondent no. 2 issued an E-tender for a period of three years i.e. 2022-23, 2023-24 and 2024-25 for sand mining from sand groups in Nagpur District and Transportation of mined sand to sand depot, depot creation and management. Though it is stated in Envelop-B i.e. the price bid that the rates shall be quoted including all taxes, it was a condition to register Online to participate in the E-tendering process.

4. It is to be noted that in the said E-tender

document, it was the condition to submit the price bid in the prescribed proforma.

5. Thus, it is the case of the petitioner that in view of the condition mentioned in the BOQ template, he quoted Rs. 257.86 per metric tonne excluding the taxes.

6. It is submitted that after declaring the petitioner as successful bidder, the respondent no. 2 entered into an agreement for Bina Sand Ghat with the petitioner on 12/05/2023.

7. Thereafter, on 15/05/2023, the respondent no. 2 issued work order in favour of the petitioner.

8. It is submitted that the petitioner is regularly paying GST on the amount of Rs. 257.86 as the said amount was without GST. It is pointed out that, despite the said fact, the respondent no. 2 is deducting the amount of GST from the amount payable to the petitioner. It is thus argued that such deduction is illegal.

9. Shri A.S. Manohar, learned counsel for the petitioner points out two similar tenders wherein there was specific condition that while uploading the price bid, the price shall be quoted inclusive of GST. It is thus argued that in the case of the petitioner, there was no such specific condition.

10. On the other hand, the learned AGP for the State strongly opposed the petition and submits that since it was the condition of the tender that the value shall be inclusive of GST, the petitioner cannot argue that the price quoted by the petitioner was without GST. The learned AGP has placed much emphasis on one affidavit which according to the learned AGP is the admission by the petitioner that the price quoted was inclusive of GST.

11. In light of rival submissions, we have perused the record. It is evident from the record that though in the tender document, there was a condition that the amount shall be inclusive of all the taxes, there was a condition to upload the tender on a given website.

12. There is no dispute that the amount had to be

quoted online in the given format. The BOQ template provided for submitting the price states that *"This BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filing the relevant columns, else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the Bidder Name and Values only."*

13. As far as the value is concerned, there were three columns provided under the said BOQ template i.e. (1) Basic Rate in Figures to be entered by the Bidder, (2) Total Amount without Taxes and (3) Total Amount in Words.

14. From the Excel Sheet, it is evident that the bidder had to mention total amount without taxes. Though the tender condition stipulates that the amount quoted shall be inclusive of GST, BOQ template indicates that the price value shall be without taxes. Furthermore, there was a condition not to modify/replace the BOQ template and if it is so done, such bid shall be liable to be rejected.

15. The petitioner though admitting that the tender condition had stipulated that the amount shall be inclusive of

GST, he had no choice while uploading the tender, to bid the price in a format given BOQ template which does not permit to include taxes in the bid amount. The consequences of violating the conditions of BOQ was rejection of bid. In the circumstances, where there is a conflict in tender condition and the conditions BOQ template, the employer ought to have clarified that even if there is a condition of rejection of tender in case of modification/replacement in the BOQ, the bid will not be cancelled, if the price is quoted with GST as stipulated in tender conditions.

16. Admittedly, such clarification was not issued. It is evident from the record that the above referred mistake was rectified in the tender issued as regards Chandrapur District and Bhandara District.

17. In the above referred backdrop, we are of the considered view that the price quoted in BOQ template was without GST and it was so quoted in a strict compliance of the condition stipulated in BOQ template to avoid consequences of violation of condition of BOQ template.

18. It is the case of the respondents that the petitioner submitted an affidavit agreeing to pay GST. However, having gone through the affidavit, it is evident that the petitioner by way of such affidavit agreed to pay the GST-TDS, which the petitioner is not disputing and ready to pay.

19. Though in reply of the respondents, there is a mention of negotiations held between the petitioner and the respondents wherein the petitioner agreed that the amount quoted by him is inclusive of GST, no document namely Minutes of Meeting (MoM) is produced on record. Thus, such statement cannot be accepted.

20. Having held so, the Writ Petition is **allowed** in terms of Clause (A) and (B).

21. Accordingly, the petition stands **disposed of**.

(RAJNISH R. VYAS, J.) **(ANIL S. KILOR, J.)**

B.T.Khapekar