



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2115 OF 2025

1. SMS Limited,
a Company duly incorporated and
registered under the companies Act,
1956/2013 having its registered
and corporate office at I.T. Park,
20 S.T.P.I. Gayatri Nagar, Parsodi,
Nagpur 440 022 through its
authorised representative,
Mr. Ujjwal s/o Mithlesh Kumar Garg,
Aged about 29 years,
Deputy Manager (Coal Mining),
R/o. Plot No. 92,
Lokhande Nagar,
Nagpur 440022.

2. Mr. Nirbhay S/o Ajay Sancheti,
Aged about 35 yrs, occ. Business,
R/o 273 'Sakar', Shivaji Nagar,
Nagpur 440 010

.....PETITIONERS

...V E R S U S...

1. The Western Coalfields Limited
through its Chairman cum Managing Director,
Coal Estate, Civil Lines,
Nagpur 440 001

2. The General Manager (CMC),
Western Coal Fields Limited,
Coal Estate, Civil Lines, Nagpur 440 001

.....RESPONDENTS

Mr. M.G. Bhangde, Senior Advocate a/b Mr. Adarsh Baheti, Advocate for
the petitioners.

Mr. Anand Jaiswal, Senior Advocate a/b Mr. Nachiket Moharir, Advocate
for respondents.

**CORAM:- ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.**

RESERVED ON : 08.09.2025
PRONOUNCED ON : 07.10.2025

JUDGMENT (PER : Rajnish R. Vyas)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. Heard Mr. M.G. Bhangde, learned Senior Advocate a/b Mr. Adarsh Baheti, Advocate for the petitioners and Mr. Anand Jaiswal, learned Senior Advocate a/b Mr. Nachiket Moharir, Advocate for respondents. Matter was closed for orders on 8th of September 2025. On 16th September 2025, petitioner filed written note on the pursis by the respondents, pointing out certain decisions of Honourable Apex Court. According to Mr Bhangde, learned Senior Counsel for the applicant, the terms and conditions of the tender documents are crystal clear which shows that the tender was excluding GST. He has invited our attention to various terms and conditions and argued the matter at length.

It is contended by the petitioner that in response to the notice inviting tender, in all 5 bidders submitted their bids including him and after technical evaluation, price bid was opened. He was declared as L-1

and accordingly, vide letter dated 25.3.2025, he requested respondent No. 2 to issue letter of acceptance. On 28-3-2025, discussion of representative of petitioner with respondent No. 2's officer took place in which respondent took a stand that tender conditions require the bidder to quote price including GST. The petitioner accordingly, addressed a letter and email dated 01-04-2025 to respondent No. 2 and requested that if there is any dispute, same be referred to independent external monitors for adjudication.

On 04-04-2025, reply was given to the petitioner in which it was stated by the respondent No. 2 that in view of clarification received from GeM, the petitioner has been declared as L-1 bidder on its quoted price which is inclusive of GST. On the same date, respondent No. 2 issued letter of acceptance in favour of the petitioner by treating price quoted as inclusive of GST and petitioner was further called upon to furnish performance security within 21 days of letter of acceptance. Again, on the same date, Area General Manager, Kanhan Area, WCL, called upon petitioner No.1 to deposit performance security in the form of bank guarantee. This prompted petitioner to again address communication on 07-04-2025 to independent external monitor with a request to intervene in the matter, but in vain. On 10-04-2025, the

petitioner received a letter from Area General Manager, Kanhan Area, WCL calling upon petitioner No.1 to submit bank guarantee. He thus, submits that the action on the part of respondent is arbitrary.

4. Per contra, Mr. Anand Jaiswal, learned Senior Advocate a/b Mr. Nachiket Moharir, for respondents argued that petition cannot be entertained by this Court considering the fact that there is valid agreement between the parties and recourse can be taken to the arbitration proceedings. He further stated that dispute with respect to interpretation of terms and conditions of the contract between the parties will not be permissible in the writ jurisdiction.

5. He argued that as per tender document, it was made amply clear that the bidders were required to quote rates and amount at two different places, firstly in excel format as enclosed with the NIT (Notice Inviting Tender) as per clause 1.8(G) of buyer added ATC and secondly, in GeM portal as per clause 6 of GeM General Terms and Conditions. As per said clauses, it would be clear that bidders was to quote rates in excel format “excluding GST, while submitting BOQ. However, the rate to be quoted in the GeM portal was to be inclusive of GST. This is clear from the GeM portal itself and as stated in clause 8 of GeM General Terms and conditions. According to him, the petitioner entered same values in both

the places i.e. rate Rs. 1215 per tonne excluding GST. It was pointed out that GeM portal is completely automated and no on-site interference is possible in the same. He further stated that when petitioner sought clarification vide letter dated 1.4.2025, the respondent took advice from GeM authorities and informed the petitioner that the price quoted was inclusive of GST. He also relied upon clause 1.8(G) of the ATC. The bidders were expected to upload the price bid containing the bill of quantities in excel format wherein the bidder was expected to quote the rate in rupees per tonne of coal production on this excel file. From the aforesaid clause, it is clear that rates quoted were to be inclusive of all taxes, duties and levies but excluding GST.

6. He further contended that after quoting the rate of per tonne of coal production in the bill of quantities, the bidder was expected to upload the same on GeM portal. However, clause 8 of GeM Terms and Conditions which stipulates that offer prices on GeM portal shall be on inclusive basis i.e. including of taxes, duties, local levies, transportation, loading and unloading charges etc. It was therefore, imperative for the bidder to quote offer prices including of taxes (inclusive of GST and other taxes, if any). The petitioner having quoted price of Rs.1215 per tonne in GeM portal as well, the said rate was

rightly considered as including GST by the answering respondent.

7. According to Mr. Jaiswal, learned Senior Counsel, there is absolutely no confusion as to whether the prices quoted is excluding GST or including GST and had there been any confusion, the petitioner could have taken recourse to clause 1.5 of GTC and sought clarification from the department. The petitioner was aware that the price was including GST and therefore, he did not take any recourse to the aforesaid clause.

8. Rejoinder was filed by petitioners in which they have categorically stated that subsequently, respondents have floated tender notice no.3/2025-36 for different work and ATC therein require that bidder should quote rate inclusive of GST and GST Compensation Cess. The tender pertains to winning coal without blasting from district Tawa: II Underground mine, at Pathakhera area of WCL. He by inviting our attention to the said tender notice (page 357) contended that respondents have realized their error and have now corrected it fresh tender process.

9. The additional affidavit was filed by the respondents wherein they canvassed that other participating bidders have duly stated the rates on GEM portal including GST and therefore, the petitioner cannot take

the plea that petitioner was not known to the fact that petitioner was supposed to quote rate excluding GST on GeM portal. A rejoinder was then also filed by the petitioners wherein they have stated that in fact, the stand taken by the respondents regarding inexclusivability is incorrect and the price quoted is exclusive of GST document.

10. In the aforesaid background it can be seen that the petition involves very short question as to whether tender floated and the other documents mandates the bidder to pay Goods and Service Tax (“GST”) amount excluding the price quoted or including the price submitted? We have gone through the documents including the Additional Terms and Conditions (“ATC”), General Terms and Conditions (“GTC”) and notice inviting tender.

11. Respondent Nos. 1 and 2, have floated a tender bearing E-Tender Notice 2/2024-25 for the work of “winning coal without blasting from combined seam section on 29.4.2024, on GeM portal (Government E-Marketplace). In all five bidders submitted their bids and after technical evaluation, financial bids were opened in which the petitioner was declared as “L1” bidder, he having quoted total price of Rs. 5,32,17,00000/-.

12. The dispute arose out of the said amount as according to the petitioners, the price quoted was excluding GST whereas as per respondents, it was otherwise. In this background, it is necessary to consider clause 5 of General Terms and Conditions on GeM 4.0 (version 1.15) which reads as under:

“5. Contract(s):

Following documents shall be construed to be part of the Contract generated through GeM:

- i. Scope of supply including price as enumerated in the Contract Document.
- ii) General Terms and Conditions (GTC)
- iii) Product/Service specific Special Terms and Conditions (STC).
- iv. Product/Track/Domain Specific STC of Particular Service including its SLA (Service Level Agreement)
- v. Bid /RA specific Additional Terms and Conditions (ATC).

The terms and Conditions stipulated in STC & SLA will supersede those in GTC and Terms and conditions stipulated in ATC will supersede those in GTC and STC in case of any conflicting provisions.”

Thus, the documents filed by the respective parties will have to be interpreted as stated above.

13. The said Service Level Document (SLA) can be downloaded from GeM portal. Bid document, more particularly, the last paragraph of page 28, is reproduced below:

“The Bid is governed by the General Terms and Conditions conditions stipulated in Bid and Service Level Agreement specific to this Service as provided in the Marketplace. However, in case if any condition specified in General Terms and Conditions is contradicted by the conditions stipulated in Service Level Agreement, then it will override the conditions in the General Terms and Conditions.”

14. Additional Terms and Conditions (buyer added ATC) is also relied upon by the petitioner including point 1.1 which gives a chart mentioning opportunity of job, quantity, time of completion and total value. The last column of “total value” if seen would show that the rate which is required to be quoted was excluding GST. The last column is produced as under:

Total value (Rs) (excluding GST)	Rs. 4,25,53,01,400/- @ Rs. 971.53/Te
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If the table reproduced at page 30 of the petition is perused, it would reveal that note is appended to it which says “the total value of work is inclusive of all applicable taxes and levies **excluding GST**. At the bottom of the chart, bifurcations has been made to show total value of the work excluding GST and including GST. The valuations are as under:

Total Value of the work excluding GST :	Rs. 4,25,53,01,400/-
Add GST @ 18% on total value:	Rs. 76,59,54,252/-
Total value of the work including GST :	Rs. 5,02,12,55,652/-

15. It is thus, clear that tender notice shows that GST is required to be excluded from the bid submitted. Not only this, clause 1.8(G) further shows that the rates quoted by the bidder shall be inclusive of all taxes, duties and levy but excluding GST and GST Compensation Cess, if applicable. The said clause further shows that the item rate (Rupees per tonne of coal production) quoted by bidder shall be inclusive of all taxes, duties and levies but **excluding GST** and GST Compensation Cess, if applicable. The payment of GST and GST Compensation Cess by service availer (i.e. CII – subsidiary) to bidder/contractor (if GST payable by bidder/contractor) would be made only on the later submitting a bill/invoice in accordance with the provisions of relevant GST and the rules made thereunder and after online filing valied return on GST portal. Payment of GST and GST Compensation Cess is responsibility of bidder/contractor. The last two paragraphs of clause 1.8(G) reads thus.

“GST @ 17% for total value of work will be added to L-1 members”.

(Rate Rupees per tonne on coal production) quoted shall be exclusive of GST).

Various terms and conditions also favours the case of petitioner and clause 2.11.1, relevant portion of which is at page 68, is reproduced below also comes to his rescue.

*“All duties, taxes (**excluding Goods and service tax (GST)**) and GST compensation cess (if applicable) only) and other levies payable.
Cost of scientific study”*

16. In this scenario, had financial bid submitted by the petitioner been not found suitable, it could have been rejected by the respondents invoking clause 2.22.2 which says, “if a bid is not substantially responsive, it may be rejected by the employer at its sole discretion”. Clause 2.22 and 2.22.1 defines a substantially responsive bid is one which confirms to all the terms and conditions and specifications of the bid document without material deviation or reservation. A material deviation or reservation is one:

- a) which affects in any substantial way the scope, quality or performance of the works.
- b) which limits in any substantial way, inconsistent with the Bidding documents, the Employer’s rights or the Bidder’s obligations under the contract; or
- c) whose rectification would affect unfairly the competitive position of other Bidders representing substantially responsive Bids.

Thus, respondents having found petitioner L1, now cannot say that the price quoted was inclusive of GST. Clause 2.23.5, is reproduced below:

“Bid evaluation shall be done after taking into consideration overall quoted price by the Bidder and effect of Goods and Service Tax (GST), GST Compensation Cess

etc as applicable. L1 will be decided on the basis of Cost of Company.”

That the respondents could have very well rejected the financial bid of the petitioner by invoking the said clause also.

17. It is necessary to mention here that principle of cost to company in contractual parlance/tender evaluation mean that while evaluating bids, the authority must look at total financial burden on the employer and not merely the quoted base price. Thus, it can be said that the aforesaid factor was taken into consideration and thereafter the petitioner was declared as L1.

18. The contention of Mr Jaiswal that since there is arbitration clause, this court may not interfere cannot be accepted since as on the date there is no concluded contract between the parties. It is further necessary to mention here that integrity of tender process is required to be maintained. Various clauses pointed out by Mr Jaiswal, cannot lead to the conclusion that the tender was inclusive of GST. The question regarding applicability of GST will have to be considered in the light of the aforesaid background. In catena of cases, Honourable Apex Court has observed that before interfering in a contract matter, in exercise of powers of judicial review, court should pose to itself following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”? And

(ii) Whether the public interest is affected?

19. The arbitrariness is defined by the Hon’ble Apex Court in case of *M.P. Power Management Co Ltd, Jabalpur Vs. Sky Power Southeast Solar India Private Ltd and Ors*, reported in *2023(2) SCC 703*, in following manner:

“An order or decision would be arbitrary under the following circumstances:

- i) if it is not based on any principle;
- ii) if it shows shows caprice without any reasonable rational
- iii) if it is actually without any good faith;
- iv) if there is total non-application of mind without due regard to the rights of parties and public interest and
- v) if it is wholly unreasonable which is little different from perverse decision under the Wednesbury doctrine.

Considering aforesaid guiding principles, it can be said that the respondent authorities are acting in arbitrary manner by treating the price quoted inclusive of GST. Respondent authorities have issued one more tender notice regarding similar work in which they have

specifically stated in the tender documents that the price be would be include of GST, which fact has been brought to the notice of this court by way of documents filed on the record.

20. We have also gone through Pursis dated 8– 9–2025 filed by the counsel for respondent and various judgments filed along with it. We have also perused written notes on the Pursis filed by the respondents, by the petitioner dated 16.9. 2025. We would like to state that none of the judgments cited deals with the issue regarding inclusivity and exclusivity of GST amount. The principles of law laid down in the aforesaid judgments cannot be disputed, but the facts of the cases are totally different. Suffice it to say that there is absolutely no dispute regarding interpretation of contract. The conditions are crystal clear that price quoted was exclusive of GST.

21. In that view of the matter, we are inclined to allow the petition. Accordingly, petition is allowed in terms of prayer clause A and B.

Corrected as per
court order dated
15.10.2025

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)

At this stage, learned counsel for respondent Nos. 1 and 2 requests for stay for a period of four weeks. Learned counsel for the petitioner opposed the request made by learned counsel for respondent Nos. 1 and 2.

Considering the fact that the only issue involved in the present petition is whether the amount demanded by the respondents was including GST or not and that who pays the GST amount, we are not inclined to allow the request of respondent Nos. 1 and 2. Accordingly, prayer for stay to the judgment and order is rejected.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)