IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1697 of 2020

M/s Jay Bee Enterprises through its partner Jay Ram Sharan Singh [aged about 72 years] Late Bharat Singh, resident of near Tagore Hill, Morabadi, Ranchi, P.O. & P.S. Bariatu, Ranchi, **....Petitioner(s).**

Versus

1. C.M.D. Jharkhand Urja Vikas Nigam Limited, Engineering Bhawan, Dhurwa, P.O. & P.S. Dhurwa, District- Ranchi.
2. M.D. Jharkhand Bijli Vitran Nigam Limited, Engineering Bhawan, Dhurwa, P.O. & P.S. Dhurwa, District- Ranchi.
3. Chief Engineer APDRP Jharkhand Bijli Vitran Nigam Limited, Engineering Bhawan, HEC, Dhurwa, P.O.& P.S. Dhurwa, District- Ranchi. **…Respondent(s).**

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Rajiv Kumar, Advocate
For the State : Mr. Ashok Kumar Yadav, Sr. S.C-I
Mr. Shivam Kumar, AC to AG

<u>**J U D G M E N T**</u>

CAV ON: 23/06/2026 **PRONOUNCED ON: 14/07/2026**

By way of filing this writ petition, the petitioner has sought for the following reliefs:-

> *i. For a declaration that the phrase "unless a different intention appears, from the terms of contract" occurring in Section 64A of Sales of Goods Act, the deduction from the admittedly payable bill for Katras 10th APDRP on the ground reduction of excise duty, was illegal and contrary to Hon'ble Apex Court decision reported in (2007) 8 SCC 466.*
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> *ii. For quashing the order Memo No.14/CMD dated 24.01.2018 [Annexure-4] passed by Respondent No.1 on the ground of clauses of NIT without adverting to terms of clause 11 of the work order 19 & 20 dated 09.01.2009 as NIT is not an offer but invitation to offer and, without taking note of qualifying lines of 64A of Sales of Goods Act.*
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> *iii. For a consequential relief for refund of Rs.18,49,682/- which has been retained by the Respondent as unjust enrichment by misuse of authority.*

2. The fact of the case is that the petitioner is a partnership firm which was awarded the work of renovation and augmentation etc of the Katras 10th APDRP Projects after being declared the lowest bidder (L1) in the tender process. Work Orders No. 19 and 20 dated 09.01.2009 fixed the rates for supply of materials, and the rates were inclusive of excise duty and other taxes. The work orders clearly stated that the prices were firm and would not be changed during the contract period. During the execution of the work, the rate of excise duty was reduced from 8% to 6%. On this basis, the respondents deducted Rs.18,49,682/- from the petitioner’s bills while making payment. The petitioner repeatedly requested the respondents to refund the deducted amount, but no action was taken.

3. Learned counsel for the petitioner submitted that the Clause 11 of the Work Orders No.19 and 20 dated 9.01.2009 clearly stated that the contract prices were firm and fixed, and no escalation or variation in price would be allowed. He further submitted that the rates accepted by the respondents were inclusive and represented the final agreed consideration between the parties. He further submitted that the phrase "unless a different intention appears, from the terms of contract" occurring in Section 64A of Sales of Goods Act, the deduction from the admittedly payable bill for Katras 10th APDRP on the ground reduction of excise duty, was illegal and contrary to Hon'ble Supreme Court decision reported in ***Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.*****, (2007) 8 SCC 466**. The respondents after accepting a firm-price had no right to reduce it merely because the excise duty rate was reduced later hence, the deduction of Rs.18,49,682/- vide memo dated 24.01.2018 is illegal, contrary to the terms of the contract, and liable to be set aside. Thus, the petitioner is entitled to a refund of the deducted amount along with all consequential benefits and appropriate interest.

4. Learned counsel for respondents denied the petitioner's contentions and submitted that although Clause 11 of the Work Order provides that contract prices shall remain firm during the contractual period, the said Clause applies only to commercial price escalation arising from market fluctuations and does not exclude adjustments arising from statutory changes in taxes and duties. Such statutory variations are specifically governed by Clause 1.3.2(d) and Clause 1.3.15(a) of the NIT, which form an integral part of the contract and were expressly incorporated into the Work Orders and the Contract Agreement dated 20.01.2009. It is further contended that the petitioner has selectively relied upon the firm-price clause while suppressing the relevant tax variation provisions and has incorrectly characterized the NIT as a mere invitation to offer despite its contractual incorporation. He also submitted that the impugned order correctly applied the contractual terms, and if the petitioner is permitted to retain the benefit of higher excise duty despite the actual reduction in statutory tax rates, it would amount to unjust enrichment, which is impermissible in law.

5. After hearing parties and perusing the record, I find that the case of the petitioner is that the price is firm and shall not be subject to any escalation whatsoever within contractual completion period in terms of Clause 11 of the Work Orders dated 09.01.2009 and as per Section 64A of the Sales of Goods Act and unless different intention appears from the terms of contract, no deduction can be done on account of reduction in of excise duty. For appreciating the matter, relevant conditions contained in Clauses of Work Order, NIT and contract agreement are need to be looked into.

6. Clause 9, 11 & 31 of the Work Order No.19 dated 09.01.2009 is extracted as hereunder:

> *"Clause 9: Taxes & Duties*
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> *The unit cost of individual items includes all applicable taxes & duties.*
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> *Clause 11: UNIT PRICE FOR MATERIALS*
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> *The unit price indicated in the BOQ shall include the prices of materials including all individual charges for transport, loading, unloading and handling of materials, commission for arranging dispatch by rail/road, direct from manufacturer factory & completing all necessary formalities in this respect such as submission of forwarding notes, collection of JSEB receipts, all insurance premium, bank charges for bank guarantee, indemnity bonds, inclusive of cost of stamps etc. as per tender documents and correspondence made thereafter.*
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> *Price shall remain firm and shall not be subject to any escalation whatsoever within contractual completion period.*
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> *Clause 31: INCLUSION OF TENDER DOCUMENTS*
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> *All matters, which are not mentioned herein will be covered by the tender documents."*

7. Clause 1.3.2(c) & (d) and Clause 1.3.15(a) of the NIT No.581/PR/JSEB/2006-07 for Katras Town is extracted as hereunder:

> *"Clause 1.3.2(d):*

(c) Other price variation:

Price quoted by the bidder shall be firm during the duration and completion of project and shall not be subjected to variation on any account. No escalation in price shall be admissible on any account to the bidder.

(d) Statutory Variation (Taxes, Duties, etc.): Any statutory variation in taxes & duties will be re-imbursed on actual on production of documentary evidence.

Clause 1.3.15(a):

EXCISE DUTY AND SALES TAX

a) All taxes, duties and levies (including Octroi etc.) arising out of the transaction between the contractor and his sub-contractor/ suppliers for this work will be included in the rates quoted by the contractor the relevant schedule 5.

Statutory Variation (Taxes, Duties, etc.) Any statutory variation in taxes & duties will be re-imbursed on actual on production of documentary evidence."

8. From the aforesaid clauses I find that condition contained in Clause 9 of the Work Order clarified the unit cost of individual items that it includes all applicable taxes & duties. This is also evident from Clause 1.3.15(a) of the NIT No.581/PR/JSEB/2006-07 for Katras Town that all taxes, duties and levies (including Octroi etc.) arising out of the transaction between the contractor and his sub-contractor/ suppliers for this work will be included in the rates quoted by the contractor the relevant schedule 5.

9. Furthermore, the inclusion condition stipulated in Clause 31 of the work order specifically stated that all matters, which are not mentioned herein will be covered by the tender documents. This make ample clear that the tender documents are included, and all matters not specifically mentioned in work order shall fall within the scope of the tender documents.

10. Further, the contract agreement dated 20.01.2009 entered between the parties also mandates that the Contractor/Supplier agrees to execute the work and deliver the materials in conformity with the provisions of the general conditions of NIT.

"And the Contractor has agreed to execute the said work in accordance with Jharkhand State Electricity Board's notice inviting Tender No. 581/PR/JSEB/2006-07 general conditions of tenders and the bill of quantity.

The Contractor/Supplier agrees to execute the above work and deliver the above said materials conformity with the provisions of the general conditions of NIT and other documents referred to above which forms part of this contract within 12 (Twelve) months from execution of this contract.”

11. It is also well-settled that every contract is to be construed with reference to its object and the whole of its terms and the whole context must be considered to ascertain the intention of the parties. In ***Provash Chandra Dalui v. Biswanath Banerjee, 1989 Supp (1) SCC 487 at page 495*** the Hon’ble Supreme Court observed as under:

> *10. ‘Ex praecedentibus et consequentibus optima fit interpretatio.’ The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected ‘ex antecedentibus et consequentibus;’ every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible. As Lord Davey said in N.E. Railway Co. v. Hastings [1900 AC 260, 267] :*
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> *“... the deed must be read as a whole in order to ascertain the true meaning of its several clauses, and... the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible....”*
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> *In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject-matter to which it was designed and intended they should apply.*

12. The Hon’ble Supreme Court in ***Bank of India V. K. Mohandas, (2009) 5 SCC 313*****,** has held that while constructing a contract, the contract must be read as a whole in order to ascertain the true meaning of its several clauses. Paragraph No. 31 of the judgment is extracted as under:

> *“31. It is also a well-recognised principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. (North Eastern Railway Co. v. Lord Hastings [1900 AC 260 : (1900-03) All ER Rep 199 (HL)])”*

13. Relevant portions of the order Memo No.14/CMD dated 24.01.2018 is extracted as hereunder:

"Hence, the SPC, JBVNL is directed to take decision on extension of contract period of M/s Jaybee Enterprises within one week with intimation to the undersigned. If the SPC decides in favour of extension of contract period then the issue of LD will also be decided accordingly. Also responsibility may be fixed for delay of about 7 years in taking decision on this important matter.

The clause no. 4.2.1.1(i) (Excise Duty) of NIT No. 303/PR/JSEB/2006-07 for Jamtara town states that "If the Excise Duty is reduced below the prevailing rates, the purchaser shall be entitled to get reimbursement from the contractor".

Similarly, the clause 1.3.2015 (a) of NIT No. 581/PR/JSEB/2006-07 for Katras Town states that "Statutory variation (Tax, Duties, etc.): Any statutory variation in taxes and duties will be reimbursed on actual on production of documentary evidence."

Hence as per terms of NIT, any variation in excise rate will have impact on the invoices raised by the contractor. Variation in the excise rate clause was applicable on either party and obviously contractor cannot demand higher excise rate even when rate was reduced. He has been paid excise duty already as per the then prevailing rate.

The Excise deduction is due to decrease in Excise rates and hence claim of petitioner is not tenable and thus rejected.

The NIT and Work Order does not have any clause regarding payment of interest due to delayed payment of invoices. The Hon'ble Jharkhand High Court also in its order dated 12/13.06-11 have directed Chairman, Electricity Board to make payments in terms of the contract to the petitioner.

The petitioner also did not press for payment of interest during hearing and left it to the discretion of the authority.

As such I am of the opinion that interest for delay payment is not considerable."

14. In this connections, Section 64-A of the Sales of Goods Act, 1930, also needs to be looked into, which reads as follows:-

"64-A. In contracts of sale, amount of increased or decreased taxes to be added or deducted. –(1) Unless a different intention appears from the terms of the contract in the event of any tax of the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax paid where tax was chargeable at that time."

15. From perusal of the aforesaid Section, it is clear that unless a different intention appears from the terms of the contract, in case of imposition or increase in tax after making of the contract, the party shall be entitled to be paid such tax or such increase.

16. In this case, the fact is just opposite, the tax has been reduced, thus the amount equivalent to such reduction is withheld by the department.

17. Once the price is fixed, there is no provision for giving any benefit for fluctuation in terms of the contract. Said benefit can only be given if the contract so provides. Though, in the case, as per the contract, the price was firm and was not subjected to any escalation but any statutory variation in taxes and duties was agreed to be re-imbursed on actual on production of the documentary evidence. This means, there was an agreement between the parties, that if the tax increases, the same will be reimbursed.

18. The world used is “statutory variation”. The word variation means either increase or decrease but in the same breath, it is a condition of the contract that the variation will be re-imbursed.

19. The word “re-imburse” has been defined in Oxford Advanced Learner’s Dictionary, 10th Edition, at Page No.1303, as follows:-

“To pay back money to somebody which they have spent or lost”

The word “re-imbursement”, means re-imbursing the persons who has sustained the loss. That means the amount of loss has to be make good by the other person, to the person who has sustained the loss.

20. In this case, the situation is different. No-one has sustained loss due to the variation of the excise duty, rather the excise duty was decreased which resulted in increase in revenue of the petitioner.

21. Be it noted that the price included the tax component and the petitioner offered his price which definitely included his cost component, profit and tax.

22. Now by downward variation of the excise duty, the liability of tax which the petitioner had to pay to the Government Exchequer had decreased. His profit component and the cost of the material remain unchanged. By downward variation of the excise duty, the petitioner will earn some more amount.

23. As per the Clause when a price includes the tax component, the tax is supposed to be paid by the respondent. This amount of tax goes to the corpus of the State and not to any person. The terms of the agreement which provides that if there is variation of tax, there will be re-imbursement to the supplier, clearly suggests that increase of tax liability will not affect the supplier and as the same is payable by the respondent-JUVNL and they will absorb the additional burden.

24. Similarly, when due to increase the respondent is absorbing the additional burden of tax, when the quantum of tax is reduced, the respondent must also get the benefit. If due to reduction of tax, the same benefit is not be passed on to the ultimate consumer, it will amount to unjust enrichment of the supplier. The profit and the cost remain constant which cannot be varied due to upward or downward revision of the tax component when the contract itself has provided that any variation in the tax will be re-imbursed. This re-imbursement should be for both the parties and not for only one i.e., the supplier.

25. From what has been discussed above, I am of the opinion that intention of the contract is clear that the component of tax is to be paid by the respondent that is the reason there is a clause of re-imbursement if the tax component increases. That being so when the tax component decreases, the benefit should be passed on to the JUVNL. There cannot be a narrow construction of the clause to make the same applicable only on increasing of tax.

26. Thus, considering what has been held above, the petitioner cannot claim refund of the amount of tax which has been withheld by the respondents. Thus, I find not merit in this writ petition, this writ petition is **dismissed**.

(ANANDA SEN, J.)

High Court of Jharkhand, Ranchi

14/ 07 /2026
A.F.R.

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