HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal (Writ) No. 384/2026

Chairman

----Appellant

Versus

M/s N.G. Gadhiya

----Respondent

For Appellant(s)	:	Mr. P.K. Kasliwal, Mr. Priyesh Kasliwal
For Respondent(s)	:	Mr. Kamlakar Sharma, Sr. Adv. assisted by Ms. Alankrita Sharma Mr. Shrikant Soni Mr. Gaurav Jain

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HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA HON'BLE MR. JUSTICE BIPIN GUPTA

Order

06/05/2026

1. Heard.

2. Admit.

3. Mr. Kamlakar Sharma, learned Senior Counsel appears as caveator, hence, formal notices need not be issued.

4. Learned counsel for the appellant has invited our attention to Clause 45.1 of the Conditions of Contract, which deals with 'Tax' and reads as under:

> *"The rates quoted by the Contractor shall be deemed to be inclusive of the GST, income tax, service tax, royalty, labour cess. Or any other tax/duty cess as applicable be law at the time of payment, shall be borne by the contractor for the performance of this Contract. The employer will perform such duties in regard to the deduction of such taxes at source as per applicable law."*

5. Learned counsel submits that, in view of above, the rates quoted by the Contractor would be deemed to be inclusive of the GST, as applicable at the time of payment, in

accordance with law. Further, if the rate of GST had increased during the pendency of the contract, the Contractor was required to quote the rates accordingly at the time of payment, and so far as the appellant is concerned, it would make the payments as per the rates quoted by the Contractor.

6. *Per contra*, learned counsel for the writ-petitioner has relied on the order dated 07.01.2021 passed by the Government of Rajasthan, Finance Department (G&T Division) whereby, Clause 36E was added to the Conditions of Contract (Appendix XI) which provides as under:

> *"36E:-if any rates of Tax are increased or decreased, a new tax is introduced in India only, an existing Tax is abolished, or any change in interpretation or application of any Tax resulting from a change or Introduction in India only due to any National or State Statute, Ordinance, Decree or other law or any regulation or bye-law of any local or other, duly constituted authority in India only, in the course of performance of contract, which was or will be assessed on the Contractor, in connection with the performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be.*
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> *However, these adjustments would be restricted to direct transactions between the Owner and Contractor only those items which are included in bid. Further, no adjustment of the Contract Price shall be made on account of variation in deemed export benefits, if any. Any increase or decrease which is included in price variation formula incorporated in the contract shall not be accounted for this purpose.*
>
> *Such increase including GST shall not be made in the extended period of contract for which the contractor alone is responsible for delay as determined by authority for extension of time."*

7. He submits that, in view of the incorporation of the aforesaid clause in the Conditions of Contract, the petitioner was required to be given the payment of the difference arising due to increase in GST from 12% to 18%.

8. The submission *prima facie* seems to be incorrect, as the aforesaid Clause 36E makes a difference between the cases where there are direct transactions only for items which are included in the bid, and not at the time of payment as provided under Clause 45.1.

9. Let the case be heard finally on 12.08.2026.

10. In the meanwhile, the effect and operation of the judgment dated 25.03.2026 passed by the learned Single Judge shall remain stayed.

(BIPIN GUPTA),J (SANJEEV PRAKASH SHARMA),ACTING CJ

KRATIKA/10