IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17690 of 2014

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M/s Milith Karv Engineering & Trading Pvt. Ltd.

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

with

==

Civil Writ Jurisdiction Case No. 18268 of 2014

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M/s Milith Karv Engineering & Trading Pvt. Ltd.

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18285 of 2014

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M/s Milith Karv Engineering & Trading Pvt. Ltd.

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :
(In CWJC No. 17690 of 2014)
For the Petitioner/s : Mr. Rakesh Kumar Singh
For the Respondent/s : Mr. Vikas Kumar, A.C. to PAAG
(In CWJC No. 18268 of 2014)
For the Petitioner/s : Mr. Rakesh Kumar Singh
For the Respondent/s : Mr. Vikas Kumar, A.C. to PAAG
(In CWJC No. 18285 of 2014)
For the Petitioner/s : Mr. Rakesh Kumar Singh
For the Respondent/s : Mr.Vikas Kumar, A.C. to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 23-02-2015

Learned counsel for the petitioner is permitted to add the

Deputy Commissioner of Commercial Taxes, Biharsharif Circle, Nalanda and the Joint Commissioner, Commercial Taxes, Administration, Patna as party respondent Nos. 8 and 9 respectively to the writ applications in the course of the day.

Heard learned counsel for the petitioner and learned counsel for the State.

The writ applications have been filed seeking directions on the respondent authorities to refund the excess payment/or allow the credit to the petitioner of the equal amounts which have been deducted in the form of WTC, i.e., tax at source for which the C-II Certificate has been issued to the petitioners for the financial years 2006-07, 2007-08 and 2008-09. The amounts due for the three years are Rs. 3,58,886/-, Rs.14,58,557/- and Rs.20,51,021/- respectively.

The petitioner had filed its applications for refund before the Deputy Commissioner, Commercial Taxes, Biharsharif Circle, Nalanda. The Deputy Commissioner issued notices on 13.12.2014 to the petitioner for producing certain evidences, including chalan, cheque number/date as also contract agreement, purchase invoice and expenses made on labour and other expenses and upon the petitioner's failure to produce the same, he has rejected the applications for refund by his order dated 29.12.2014. All that has been done even after noting that the assessments for the said years have become time barred.

It is difficult to support any such action of the Deputy Commissioner, Commercial Taxes. Once the petitioners have produced the certificate for deduction of tax at source in Form C-II before him, it is not for the petitioners to produce any evidence regarding the deposit of any such tax deducted, rather if they are required to be verified they had to be verified by the authorities of the Commercial Taxes department from the Railways. Irrespective of whether the deposits had been made or not, once the tax had been deducted at source in terms of Rule 29 (6), the same had to be treated as payment of tax on behalf of the petitioners and credit had to be given for such deposits on the mere production of Form C-II and the only thing that could have been verified by the Department regarding the same would be regarding their genuineness and that they were not forged documents.

From a consideration of Rule 43 of the Bihar Value Added Tax, 2005, it is evident that in case the amount of refund exceeds to Rs.50,000/-, the application for refund has to be made before the Joint Commissioner and not before any lower authority. In the present matter, the petitioners have admittedly not filed their applications before the Joint Commissioner. In the said circumstances, the entire proceedings before the Deputy Commissioner, including the order dated 29.12.2014 passed by him are without jurisdiction. The same are, accordingly, quashed.

The Deputy Commissioner of Commercial Taxes, Biharsharif Circle, Nalanda, Respondent No.8, is directed to return the application and documents filed by the petitioners before him to the petitioners forthwith on production of a copy of this order who shall file the same before the Joint Commissioner of Commercial Taxes with whatever rectification as may be required. The Joint Commissioner, Commercial Taxes, being the prescribed authority, shall consider the claims of the petitioners and dispose of the same within a period of two months from the presentation of the applications by the petitioners before him.

The writ applications are, accordingly, disposed of with the aforesaid directions and observations.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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