IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8326 of 2009

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M/S Electrosteel Castings Ltd. through its Branch Manager, Muzzaffar Ali, s/o Md. Ismaile, Kolkata 700017, Branch Office Mohalla 11/F, Rajendra Nagar, Plice Station Kadam Kuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Accountant General,. Government of Bihar, Patna.
3. The Engineer-in-Chief cum Spl. Secretary, Public Health Engineering Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s :
For the Respondent/s : Mr. (SC 21)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 29-01-2015 The prayer made by the petitioner in this writ application reads as follows:

> *"1. That this is an application for issuance of an appropriate writ(s), order(s) to the respondent to pay Rs. 1,96,138.00 against bill No. 251 dated 16.07.2007 with interest till date of payment for supply (order No. 548 dt. 20.03.2007) 200mm C.I. Pipe to the various P.H. Divisions of the department."*

2. The respondents have filed a counter affidavit on 6th December 2010, in which it has been stated as follows:

> *"5. That, after supplying the materials in view of an agreement entered into between the Executive Engineer, Public Health Division, Sasaram and the petitioner's firm, the petitioner, submitted his bill, amounting to Rs. 2,22,720.00 for making payment.*
>
> *It is further stated that the Executive Engineer, Public Health Division, Khagaria, under the mistaken impression that the amount of Excise Duty has to be recovered, deducted a sum of Rs. 1,96,138.00 from the bill submitted by the petitioner and deposited the same in the Govt. head through monthly A/c submitted in the office of the Accountant General, Bihar, Patna, although, Rules of the Excuse Duty do not provide any clause for deduction of the same, rather, exemption ahs been granted by the Govt. of India for the implementation of welfare schemes of Water supply.*

6. That, it is humbly submitted that, since, deducted amount of Rs. 1,96,138.00 towards Excise duty has already been deposited in the Government Revenue Head in the treasury, therefore, the department has taken all possible and necessary steps to refund the deducted amount to the petitioner.

It is expected by this department that, the entire necessary formalities in this regard shall be completed very soon and thereafter, the petitioner shall be refunded the deducted amount of Rs. 196138.00 expeditiously, without making any undue delay."

3. As would be evident from the stand of the respondents, the claim of the petitioner, for receiving payment of Rs. 1,96,138.00, has been admitted and, therefore, when learned counsel for the petitioner has not appeared to press this writ application, it must be presumed that the petitioner has already received the payment of Rs. 1,96,138.00 as assured in paragraph no. 6 of the counter affidavit.

4. That being so, this writ application now has become infructuous and is disposed of accordingly.

(Mihir Kumar Jha, J)

Sujit/-

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