IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11626 of 2015

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1. Ujjain Engicon India Private Limited, through its Director, Mahendra Kishore Singh, son of Shri Harendra Kishore Singh, resident of Hari Vatika Chowk, Bettiah, Police Station- Bettiah Town, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Engineer-in-Chief-cum-Deputy Secretary, Road Construction Department, Government of Bihar, Patna
3. The Chief Engineer, North Bihar Upbhag, Road Construction Department, Darbhanga at Patna
4. The Superintending Engineer, Road Construction Department, Motihari Circle, District- East Champaran
5. The Executive Engineer, Road Construction Department, Bettih Division, District- West Champaran
6. The Secretary, Ministry of Finance (Department of Revenue), Govt. of India, New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra, Advocate
For the Respondent/s : Mr. R.R. K Pandey, SC-29
Mr. S.D. Sanjay, ASG
Mr. A.B. Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)
Date: 05-11-2015

We have heard Mr. Bashishtha Narayan Mishra, learned Counsel, appearing on behalf of the petitioner, and Mr. S.D. Sanjay, learned Additional Solicitor General, appearing on behalf of the Union of India. However, none has appeared to resist the writ petition on behalf of the State-respondents.

By virtue of Notification No.25/2012-Service Tax, dated 30.06.2012, issued by the Government of India, Ministry of Finance (Department of Revenue), the writ petitioner stands, admittedly, exempted from payment of service tax. Notwithstanding the exemption, service tax has been deducted from the petitioner's bill by respondent No.5, namely, Executive Engineer, Road Construction Department, Bettiah Division, District- West Champaran. Such deductions, in the light of the judgment, dated 28.07.1975, passed in CWJC No.7694 of 2015 along with analogous cases by a Division Bench of this Court, is bad in law inasmuch as the Division Bench in its order, dated 28.07.2015, has observed, concluded, held and directed as under:

> "Learned counsels for the State are unable to justify the action of the respondents as to under what authority of law the deduction of service tax is being made by them in view of the general exemption granted by the Notification dated 17.3.2012.
>
> It is well settled that under Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. In view of the exemption, it is evident that the respondents have no authority to collect service tax which is not at all leviable under the law.
>
> In the aforesaid view of the matter, all the writ applications are allowed and the concerned respondents are directed to refund the entire amount of service tax deducted from the bills of the petitioners after the issuance of the aforesaid Notification dated 17.3.2012. They are further

> restrained from collecting any such tax from the bills of the petitioners or any other contractors in future so long as the said exemption remains in operation."

In the light of the conclusions and directions given by the order, dated 28.07.2015, respondent No.5, namely, Executive Engineer, Road Construction Department, Bettiah Division, District- West Champaran, is hereby directed to refund, within a period of three months from the date of receipt/production of a copy of this order by respondent No.5, namely, Executive Engineer, Road Construction Department, Bettih Division, District- West Champaran, the amount of service tax deducted from the bills of the writ petitioner.

The writ application is disposed of with the aforesaid observations and directions.

However, there shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Anjana Mishra, J.)

Mkr./-

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