IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9870 of 2012

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M/s. Debashree Constructions(India)Pvt.Ltd., a Company incorporated under the Indian Companies Act 1956, having its Office at New Area , Nawajadik Complex, Old G.T.Road, Aurangabad, Bihar through its Managing Director Smt. Geeta Singh, W/O Sri Kaushal Kumar Singh, R/O New Area, Aurangabad, P.S.-Aurangabad, Bihar

.... Petitioner

Versus

1. The IRCON International Ltd, a Government of India undertaking having its registered Office at Plot No. C-4, Distt-Centre, Saket, New Delhi-110017, through its Director (Projects)
2. The Additional General Manager, IRCON International Ltd. Ist Floor, Sone Bhawan, Daroga Prasad Rai Path, Patna
3. The Deputy Manager (Civil), IRCON International Ltd Aurangabad, Bihar
4. The Manager (Civil), IRCON International Ltd Aurangabad, Bihar
5. The Commissioner-cum-Principal Secretary, Commercial Taxes Department Government of Bihar, Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.6244 of 2015

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M/s. Baba Hans Construction Pvt. Ltd., a company incorporated under the provisions of the Indian Companies Act, 1956 having its registered office at 162, Bhola Apartment, Anandpuri, West Boring Canal Road, Patna, through its Managing Director Sri Satyendra Kumar Singh son of Jagdish Prasad Singh, resident of 162, Bhola Apartment, Anandpuri West Boring Canal Road, Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Executive Engineer, Road Construction Department, Road Division, Jamui
5. The Executive Engineer, Road Construction Department, Road Division, Lakhisarai
6. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna

.... Respondents

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with

Civil Writ Jurisdiction Case No.6933 of 2015

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M/s. Sincon Infrastructure Pvt. Ltd. a company incorporated under the Indian Companies Act, 1956 having its registered office at LG-1 & 2, Majestic Plaza, West Boring Canal Road, Patna-1, through its Director Sri Vishal Kumar son of Sri Kartik Kumar, resident of Majestic Plaza, West Boring Canal Road, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer -in-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Executive Engineer, Road Construction Department, Road Division, Supaul.
5. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.7608 of 2015

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M/s. Sharda Construction, a partnership firm having its office at New Area, Maharajganj Road, Aurangabad, Bihar through it's Partner Sri Kaushal Kumar Singh Son of Late Ambika Narayan Singh, resident of New Area, Aurangabad, P.S. & District- Aurangabad (Bihar)

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna.
4. The Executive Engineer, Road Construction Department, Road Division No.-1, Aurangabad.
5. The Executive Engineer, Road Construction Department, Road Division, Dehri-on-Sone.
6. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.

.... Respondents

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with

Civil Writ Jurisdiction Case No.7788 of 2015

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M/s. Sharda Construction, a partnership firm having its office at New Area, Maharajganj Road, Aurangabad, Bihar through its Partner Sri Kaushal Kumar Singh Son of Late Ambika Narayan Singh, resident of New Area, Aurangabad, P.S. & District- Aurangabad (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Biahr, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Works Division, Sasaram-1.
5. The Executive Engineer, Rural Works Department, Works Division, Bhabhua.
6. The Executive Engineer, Rural Works Department, Works Division, Aurangabad.
7. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.

.... Respondents

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Appearance :
(In all the cases)
For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate
For the IRCON : Mr. D.V.Pathy, Advocate with
M/S P.K.Mishra & Manju Jha, Advocates
For the State : Mr. Vikash Kumar, AC to PAAG
(In CWJC Nos.9870,6244,
6933 of 2015)
For the State (in CWJC
Nos. 7608 & 7788 of 2015): Mr. Sandeep Kumar, GA 8

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

11 07-07-2015 Heard learned counsel for the petitioners and learned counsels for the State as also for IRCON International Limited.

In all these writ petitions the prayer of the petitioners is that the respondents be directed not to make flat deductions at source of value added tax at the rate of 4% from the bills of the petitioners relating to execution of the works contract as such action is contrary to the provisions of proviso to sub-section(2) of Section 41 of the Bihar Value Added Tax Act, 2005 as also the proviso to sub-rule(2) of Rule 29 of the Bihar Value Added Tax Rules, 2005 and for consequential directions to the respondents.

In the course of hearing of the matter a suggestion was given to the respondent Commercial Tax authorities that rate of tax deduction at source of the VAT under the Bihar VAT Act may itself be fixed so as to cover the actual tax ultimately recoverable from the petitioners-contractors instead of compelling them to follow the onerous procedure of providing the details under the different heads under the proviso to Rule 29(2) of the Rules, so as to make it easier for them to do business within the State. The respondent Tax Authorities have, however, refused to do so since the provisions of Section 41 of the Bihar Vat Act and Rule 29 of the Bihar VAT Rules have been declared intra vires in the case of Abdul Majeed Khan vs. The State of Bihar & Ors. : 2010(3) PLJR 782.

Learned counsel for the petitioners thus submits that in view of the stand taken by the State respondents, the tax deducting authorities, whether IRCON International Ltd. or the State Department concerned, ought to be directed to strictly comply with the provisions of Rule 29(2) and Section 41 of the Act with regard to not making deductions on account of payment pertaining to the different categories as enumerated therein which they are doing in unjustified and illegal manner.

Learned counsel for the IRCON International Ltd. submits that they are afraid of the Tax officials who orally threatened them with proceedings in case the full deductions are not made.

Be that as it may, it is the obligation of the authorities to comply with the provisions of the Act and the Rules. If the Act and the Rules provide that deduction shall not be made with regard to certain items, it is not permissible for the person making the deduction of tax at source to continue to make deduction of the entire amount from the bills without giving the benefit as provided under the Rules. The same in fact is in the form of injunction and violation of the same is legally impermissible. The deducting authorities are, accordingly, directed to strictly comply with the provisions of Section 41 of the Bihar VAT Act and Rule 29 of the Bihar VAT Rules in the matter of making deduction and wherever the details are provided to them by the petitioners-contractors or are available to them then they shall be obliged not to make deduction with regard to the heads mentioned therein and the TDS shall be deducted only with respect to the remaining part of the bills. Any attempt by the tax authorities to compel full tax deduction at source is to be condemned. The provisions of law must be strictly followed by the authorities concerned.

It is pointed out by learned counsel for the petitioners that despite the interim order of this Court to the deducting authorities not to make any deduction on the petitioner providing them the details, the authorities of the State have continued to make full deduction. In case the authorities making the deduction of tax have not given the benefit to the petitioners, on the basis of details provided by them, then they shall ensure that not only such deduction are made in all future bills but also even with regard to the past bills if they failed to give the benefit of such deduction under Section 41 of the Act and Rule 29 of the Rules then the amount shall be adjusted in the future bills.

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

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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