IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14617 of 2015

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M/s. Foundation Engineers, having its place of business within the State of Bihar at Flat No. 9/1 Galaxy Apartment, Road No.3, New Patliputra Colony, Patna-13 through its partner Smt. Amita Kumar, D/o Late Rajkishore Prasad, resident of 9/1 Galaxy Apartment, Road No.3, New Patliputra Colony, P.S. Patliputra Thana, District Patna -13

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes, Patna North Circle, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jayanta Roy Choudhary with Mr. Binay Kumar, Advocates

For the Respondent/s : Mr. Rajesh Ranjan, AC to GA 8

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 27-10-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 15.1.2015 passed by respondent No.2, the Deputy Commissioner of Commercial Taxes, North Circle, Patna along with the demand notice dated 17.1.2015 for the period 2012-13.

This is a case where the petitioner has admittedly paid the entire amount of tax under the Bihar Value Added Tax Act, 2005 but had failed to take a registration under the Bihar Entry Tax Act, as a result of which proceedings were initiated against the petitioner. It is the clear stand of learned counsel for the petitioner and not rebutted by the respondents that the rate of tax payable under the VAT Act was earlier more than that of Bihar Entry Tax Act and thereafter it has become equal to the rate of VAT and thus no further tax is payable and no payment of tax as such has been evaded by the petitioner causing loss to the State in collection of tax. It is, accordingly, submitted by learned counsel for the petitioner that the case of the petitioner is squarely covered by the decision dated 31.7.2015 of this Court in CWJC No. 7623 of 2015 (Shell India Markets Pvt. Ltd. vs. The State of Bihar & Anr.) and its analogous cases.

Although a bald assertion has been made in paragraph-22 of the counter affidavit that the fact of the present case is not similar to the case referred by the petitioner, i.e., Shell India Markets Pvt. Ltd. (supra) but nothing has been shown in the counter affidavit or by learned counsel for the State to distinguish the said matter from the present case, rather it is asserted that the petitioner has not taken registration for the period 2012-13 for the purpose of evading the payment of tax under the Entry Tax Act, 1993. How such evasion has been made learned counsel for the State is unable to show.

In the aforesaid circumstances, the order dated 15.1.2015 passed by the Deputy Commissioner, Commercial Taxes, North Circle, Patna along with the demand notice dated 17.1.2015 for the period 2012-13 is quashed and the writ application is allowed in terms of the order dated 31.7.2015 passed in CWJC No. 7623 of 2015, Shell India Markets Pvt. Ltd. case (supra).

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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