IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7694 of 2015

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M/s Rishi Builders India Pvt. Ltd. through its Managing Director Sashi Bhushan Rai, son of Late Sahdeo Rai, resident of village- Radhia, Police Station- Gobindganj, District- East Champaran.

.... Petitioner

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, Motihari Division, District- East Champaran.
6. The Govt. of India through Ministry of Finance, Department of Revenue, New Delhi.

.... Respondents

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with

Civil Writ Jurisdiction Case No.8170 of 2015

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Veena Singh, W/o- Balram Kumar, through its Power of Attorney holder and authorized signatory, Sri Balram Kumar, Son of Sri Bishun Dev Singh, resident of At- Kapasiya, (Veena Palace), P.O.- Refineary Township, P.S.- Town Thana, District- Begusarai.

.... Petitioner

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.
4. The Superintending Engineer, Road Construction Department, Begusarai Division, District- Begusarai.
5. The Executive Engineer, Road Construction Department, Begusarai Division, District- Begusarai.
6. The Government of India through Ministry of Finance Department of Revenue, New Delhi.

.... Respondents

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with

Civil Writ Jurisdiction Case No.8197 of 2015

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Vallabhaneni Construction Pvt. Ltd, Shop No. 21, IGMS Complex, Labbipet, Vijayawada- 10 through its power of attorney holder, Sri M. Rajesh

.... Petitioner

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.
4. The Superintending Engineer, Road Construction Department, Dharbhanga Division, District- Dharbhanga.
5. The Executive Engineer, Road Construction Department, Dharbhanga Division, District- Dharbhanga.
6. The Executive Engineer, Road Construction Department, Benipur Division, District- Dharbhanga.
7. The Government of India through Ministry of Finance Department of Revenue, New Delhi.

.... Respondents

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with

Civil Writ Jurisdiction Case No.9261 of 2015

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M/s SVSVS Prajects Pvt. Ltd., Plot No. 31, 2nd Floor, near Central Bank of India, Phase-1, Kalyan Nagar, Hyderabad-500038 through its Managing Director, V.Ram Mohan Rao, son of Late Seethanamaiah

.... Petitioner

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, South Bihar wing, Road Construction Department, Patna.
4. The Chief Engineer, North Bihar wing, Road Construction Department, Darbhanga.
5. The Superintending Engineer, Road Construction Department, District- Saharsa.
6. The Superintending Engineer, Road Construction Department, North Bihar Cirlcle, District- Darbhanga.
7. The Superintending Engineer, Road Construction Department, South Bihar Circle, District- Patna.
8. The Executive Engineer, Road Construction Department, Madhubani Division, District- Madhubani.
9. The Executive Engineer, Road Construction Department, Road Division, District- Saharsa.
10. The Executive Engineer, Road construction Department, Road Division, District- Mdhepura.
11. The Executive Engineer, Road construction Department, Patna City

Road Division, Gulzarbagh, Patna.
12. The Government of India through Ministry of Finance Department of Revenue, New Delhi.

.... Respondents

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with

Civil Writ Jurisdiction Case No.4258 of 2015

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M/s Narayani Nirman through its Managing Partner Anil Kumar Jha son of late Dinesh Ganesh Garai, resident of Hari Vatika Chowk , Bettiah , Police Station- Bettiah Town , District- West Champaran.

.... Petitioner

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 , Bettiah Division, District- West Champaran.

.... Respondents

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with

Civil Writ Jurisdiction Case No.9772 of 2015

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M/s Niranjan Sharma, through its Power of Attorney holder namely Sri Pawan Kumar Singh, S/O Late Ramnaresh Singh, resident of Belan Bazar, P.S.- Kashim Bazar, Munger.

.... 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, South Bihar wing, Road Construction Department, Patna.
4. The Superintending Engineer, Road Consruction Department, East Bihar Circle, District- Bhagalpur.
5. The Superintending Engineer, Road Consruction Department, Munger Circle, District- Munger
6. The Executive Engineer, Road Construction Department, Road Division Bhagalpur, District- Bhagalpur.
7. The Executive Engineer, Road Construction Department, Road Division Munger, District- Munger.
8. The Government of India through Ministry of Finance Department of

Revenue, New Delhi.

.... Respondents

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with

Civil Writ Jurisdiction Case No.3322 of 2015

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M/s SAJ Infracon Project India Limited through its Managing Director namely Akhilesh Kumar Jaiswal son of Late Ram Narayan Lal, resident of S-401, Udaygiri Apartment, Budh Marg, Patna, P.S.- Kotwali, District-Patna

.... 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-Additional Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna
3. The Superintendent Engineer Saran Road Circle Officer Hajipur
4. The Executive Engineer, Road Construction Department, Road Division, Chhapra

.... Respondents

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with

Civil Writ Jurisdiction Case No.4631 of 2015

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M/s Saj Infrocon Project India limited through its Managing Director, Akhilesh Kumar Jaiswal, S/o Late Ram Narayan Lal, R/o- S-401, Udaygiri Apartment, Budh Marg, Patna-800001.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Govt. of Bihar, Bishweshraiy Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief cum Addl. Dy. Secretary cum Special Secretary, Road Construction Department, Govt. of Bihar, Bishweshariya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer, RCD, Muzaffarpur Road Circle, at Muzaffarpur.
4. The Executive Engineer, Muzaffarpur Road Division, R.C.D, Muzaffarpur, at Muzaffarpur.
5. The Senior Accounts officer, Muzaffarpur Road Division, R.C. D, Muzaffarpur, at Muzaffarpur.

.... Respondents

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Appearance :

(In CWJC Nos.7694, 8170, 8197, 9261,9772,all of 2015)

For the Petitioner/s : Mr. Shishir Kumar, Advocate

For the Respondent/s : Mr. Gautam Bose, AAG-8 with Mr.Rohit Mishra, AC to AAG-8

Mr. Harish Kumar, G.P. 32 with Mr. Saroj Kumar, AC to G.P.32
For Union of India : Mr. Manoj Kr. Singh, CGC
For the petitioner in CWJC No.4258/15
For the Petitioner/s : Mr. B.N. Mishra, Advocate
For the State : Mr. R.K.Chandram, AC to G.P.1
(In CWJC No.3322 of 2015)
For the Petitioner/s : Mr. Suresh Pd.Singh No.1, Advocate
For the State : Mr. Vikash Kumar, AC to PAAG
(In CWJC No.4631 of 2015)
For the Petitioner/s : Mr. Suresh Pd Singh No.1
For the State : Mr. Anshuman Singh G.P. 24
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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

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

5 28-07-2015 Heard learned counsels for the petitioners and learned counsels for the State.

All these writ application raise common issue and they have accordingly been heard together and are being disposed of by this common order.

The petitioners in these writ applications seek a direction on the respondents to refund the deducted amount of service tax from the bills of the petitioners which has been wrongly deducted contrary to Clause 13(a) of the Notification No. 12/2012-Service Tax dated 17th March, 2012 issued by the Government of India, Ministry of Finance (Department of Revenue) and for consequential direction restraining the respondents from deducting the service tax in future.

All the petitioners are contractors executing different works under different contracts entered into with the Road Construction Department, Government of Bihar in different circles and divisions. While paying the bills of the petitioners the authorities of the Road Construction Department had been deducting service tax from the same at the rate of 12.36%. The stand of the petitioners is that such deduction is not permissible in view of the General Exemption granted by the Government of India by the aforesaid Notification No.12/2012-Service Tax dated 17th March, 2012 issued by the Government of India, Ministry of Finance (Department of Revenue) in which it is provided that in exercise of power conferred by Section 93(1) of the Finance Act, 1994 the Central Government exempts taxable services from the whole of the service tax leviable thereon under Section 66B of the Finance Act which includes services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of road, bridge, tunnel or terminal for road transportation for use by general public under paragraph 13(a) of the said Notification. The petitioners have been executing different contracts for the construction and maintenance of the roads under the Road Construction Department and they are aggrieved by the action of the respondent authorities in making continuous deductions of service tax from their bills despite the exemption notification.

In the counter affidavits filed on behalf of the respondents the stand taken is that the Estimated Cost Value (ECV) for the different works was prepared after including service tax at the rate of 12.36% of the total cost of work on which the tender was floated including the service tax and in support of the same certain materials have been brought on the record and for the said reason the amount of service tax at the rate of 12.36% which was included in the cost of work was being deducted from the bills of the petitioners.

On the other hand, learned counsels for the petitioners submits that neither in the Notice Inviting Tender nor in the BOQs any mention has been made of the inclusion of service tax at the rate of 12.36% or at any other rate. Moreover, it is submitted that tax can only be collected under the authority of law and in view of the aforesaid Notification it is not permissible for the respondents to deduct service tax irrespective of the fact that they had included it in their BOQs in the tender.

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.

(Ramesh Kumar Datta, J)

(Amaresh Kumar Lal, J)

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