IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.239 of 2015
In
Civil Writ Jurisdiction Case No. 8197 of 2015

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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- Begusarai. null null
5. The Executive Engineer, Road Construction Department, Dharbhanga Division, District- Dharbhanga.
6. The Executive Engineer, Road Construction Department, Benipur Division, District- Dharbhanga.

Respondents.... .... Petitioner/s

Versus

1. Vallabhaneni Construction Pvt. Ltd, Shop No. 21, IGMS Complex, Labbipet, Vijayawada- 10 through its power of attorney holder, Sri M. Rajesh writ petitioner ………… Opp.Party
2. The Government of India through Ministry of Finance Department of Revenue, New Delhi.

Respondent.... .... Opp.Party

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with

Civil Review No.240 of 2015
IN
Civil Writ Jurisdiction Case No. 9261 of 2015

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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 E ngineer, 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, Guljarbag, Patna

Respondents.... .... Petitioner/s

Versus

1. 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 ………………….. writ petitioner/ Opp.Party
2. The Government of India through Ministry of Finance Department of Revenue, New Delhi

Respondent.... .... Opp.Party

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with

Civil Review No.241 of 2015

IN

Civil Writ Jurisdiction Case No. 3322 of 2015

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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 Superintending Engineer Saran Road Circle Officer, Hajipur
4. The Executive Engineer, Road Construction Department, Road Division, Chhapra

Respondents.... .... Petitioners

Versus

1. M/s Saj Infracon Project India Ltd. 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

Writ petitioner.... .... Opp.Party

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with

Civil Review No.242 of 2015

IN

Civil Writ Jurisdiction Case No. 7694 of 2015

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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.

.... Petitioner/s

Versus

1. 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

. Writ petitioner/opp.party

2. The Government of India through Ministry of Finance, Department of Revenue, New Delhi.

Respondent.... .... Opp.Party

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with

Civil Review No.243 of 2015

IN

Civil Writ Jurisdiction Case No. 9772 of 2015

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1. The State Of Bihar through the Principal Secretary, Road Construction Department, Govt. 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 Construction Department, East Bihar Circle, District- Bhagalpur
5. The Superintending Engineer, Road Construction 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

Respondents.... .... Petitioners

Versus

1. M/s Niranjan Sharma, through its Power of Attorney Holder namely Sri Pawan Kumar Singh, son of Late Ramnaresh Singh, resident of Belan Bazar, P.S. Kashim Bazar, Munger…. Writ petitioner-opposite party
2. The Government of India through Ministry of Finance, Department of Revenue, New Delhi

.... Respondents/Opp.Party

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with

Civil Review No.244 of 2015

IN

Civil Writ Jurisdiction Case No. 4631 of 2015

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1. The State Of Bihar through the Secretary Road Construction Department Govt. Of Bihar, Patna
2. The Engineer-in-Chief-cum- Addl. Dy. Secretary-cum- Special Secretary, Road Construction Department, Government of Bihar, Bishwashriya Bhawan, Bailey Road, Patna
3. The Superintending Engineer, RCD, Muzaffarpur Road Circle at

Muzaffarpur
4. The Executive Engineer, Muzaffarpur Road Division, RCD, Muzaffarpur at Muzaffarpur
5. The Senior Account Officer, Muzaffarpur Road Division, RCD, Muzaffarpur at Muzaffarpur

.... Respondents/ Petitioners

Versus

M/s Saj Infrocon Project India Ltd. Through its Managing Director Akhilesh Kumar Jaiswal, S/o Late Ram Narayan Lal, resident of S-401, Udaygiri Apartment, Budha Marg, Patna – 800001,
……….. ……………………………writ petitioner- Opp.Partry

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with

Civil Review No.245 of 2015

IN

Civil Writ Jurisdiction Case No. 8170 of 2015

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1. The State Of Bihar through the Principal Secretary, Road Construction Department, Govt. 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, The State Of Bihar through the Principal Secretary, Road Construction Department, Govt. Of Bihar, Patna
4. The Superintending Enginmeer, Road Construction Department, Begusarai Division, District- Begusarai
5. The Executive Engineer, Road Construction Department, Begusarai Division, District- Begusarai

…………..Respondents/Petitioners

Versus

1. 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) PO Refinery Township, P.S. Town Thana, District Begusarai…. Writ petitioner …. Opp.Party
2. The Government of India through Ministry of Finance, Department of Revenue, New Delhi ……Respondent/ Opposite Party

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with

Civil Review No.246 of 2015

IN

Civil Writ Jurisdiction Case No. 4258 of 2015

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1 The State of Bihar through the Principal Secretary, Road Construction Department, Govt. 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, Govt. Of Bihar, 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/ Petitioners

Versus

M/s Narayani Nirman through Its Managing Partner Anil Kumar Jha, S/o Late Dinesh Ganesh Garai, resident of Hari Vatika Chowk, Bettiah, Police Station- Bettiah Town, District- West Champaran

Writ petitioner/Opp.Party

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Appearance :

For the review Petitioners: Mr. Lalit Kishore, PAAG
Mr. Vikash Kumar, AC to PAAG
Mr. Anil Kumar Sinha, GA-9
Mr. Bishwa Bibhuti Kumar Singh,AC to PAAG
Mr. Ranjeet Kumar, AC to PAAG

For the UOI : Mr. S.D.Sanjay, Addl.S.G.
Mr. Anshay Bahadur Mathur, CGC.

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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)

5 14-01-2016 Heard learned Principal Additional Advocate General for the State and learned Additional Solicitor General, for the Union of India.

All the civil review applications have been filed by the State of Bihar for review of the order dated 28.7.2015 passed by this Court in CWJC No. 8197/2015 and its analogous cases by which the writ petitions were allowed and the petitioners herein, who were respondents in the writ petitions, were directed to refund the entire amount of service tax deducted from the bills of the writ petitioners after issuance of notification no. 12/2012-service tax dated 17.3.2012 and the

State-respondents (petitioners herein) were further restrained from collecting any tax from the bills of the writ petitioners or any other contractors in future so long as the said exemption remains in operation.

The writ petitioners had executed different works under different agreements entered into between the writ petitioners and the Road Construction Department, Government of Bihar in different Circles and Divisions and while paying the bills of the writ petitioners, the authorities of the Department were deducting service tax at the rate of 12.36%, which was challenged by the writ petitioners as not permissible for the respondents to deduct in view of the general exemption granted by the Government of India, Ministry of Finance, Department of Revenue by notification no. 12/2012-Service Tax dated 17.3.2012.

The stand taken by the State in the counter affidavits filed was that the Estimated Cost Value for 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, whereas the writ petitioners assailed the same stating that neither in the NIT nor in the BOQs any mention has been made of the inclusion of service tax and moreover the stand of the writ petitioners was that in view of the exemption notification the respondent-authorities had no authority of law to collect any service tax and they could not have deducted the same from their bills. This Court accepted the contention of the writ petitioners and issued the aforesaid direction.

Learned Principal Additional Advocate General, apart from reiterating the fact that the Estimated Cost Value for the different works was prepared by including service tax at the rate of 12.36% of the total cost of work on which tender was floated, which had not found any favour with this Court earlier and thus cannot be a ground for review of the order.

He also sought to take this Court to the nature of contract as enumerated in the notice inviting tender stating that the contract in question will not come within the ambit of Clause 13(a) of the Government of India notification dated 17.3.2012. He has taken us in particular to paras 4,5,6,8,10 and 11 of the NIT to try to show that it is not a contract which is exempted by the exemption notification. He has specifically emphasized the fact that the contractor in question has been shown to be not a traditional works contractor which is constructing the roads and repairing it, rather he has to maintain the same for a certain period of time as given in the contract so as to guarantee that roads remain above agreed service level and this he has to do independently without any direction from the Government on his own. It is thus submitted that such type of works were not envisaged in the exemption notification rather it related to traditional type of road contract.

Even if it were possible to review the order on the basis of such submissions, which we have serious doubts about, still from a consideration of those very paragraphs which have been pressed into service by learned Principal Additional Advocate General, we find that all that they relate to is maintenance and repair so as to keep the roads at certain levels as have been agreed keeping in view the comfort of those who are to use the roads. There is nothing in the said contract which can be said to be beyond the purview of the general exemption granted by the Government of India notification dated 17.3.2012 which reads as under:-

> "13. Service provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of –
>
> (a) road, bridge, tunnel, or terminal for road transportation for use by general public;
>
> ……………………."

We find nothing in the terms of the said contract which goes beyond the purview of the general exemption provided to such service which itself is in very wide terms. Moreover, the exemption itself having been granted not in the distant past but recently on 17.3.2012 when such type of service contract had been prevalent in the country for more than a decade, it is not to be expected that there was any such intention to execute such type of road maintenance contract pursuant to the exemption. Had it been so, would the exemption notification itself not provided for it?

Learned Additional Solicitor General, while broadly adopting the submissions of learned Principal Additional Advocate General, has not been able to show before us how the exemption notification, which is in the widest possible term, would not cover the present transactions. He has however, further sought to argue that the direction of refund ought not to have been made rather whatever amount was deducted from the bills of the writ petitioners, ought to have been directed to be deposited with the Government of India.

We are not only unable to accept such submission which is contrary to all principles of fairness and equity rather the same cannot be a ground for review.

The writ petitioners having succeeded in showing to the Court that they were covered by the general exemption notification and the service tax being still deducted from their bills, definitely, had a right to make a prayer for refund of the said amounts.

For all the aforesaid reasons, we find no merit in the review applications. They are, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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