

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19154 of 2015

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M/s S. & P Infrastructure Developers Pvt. Ltd. a registered Company having its registered Office at N 07, New Delhi House 27, Barkhamba Road, New Delhi 110001 through its authorized representative Sri Shatrudhan Mishra, s/o Late Mr. Ambika Mishra Resident of House No. 29, Village bhuhalwa Deeh, Post - Jharmahui, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Road Construction, Govt. of Bihar Patna.
2. The Engineer in chief, Department of Road Construction, Govt. of Bihar Patna.
3. The Chief Engineer, Department of Road Construction (NH Wing), Bihar, Patna.
4. The Superintending Engineer, Department of Road Construction 9NH Wing), Bhagalpur.
5. The Executive Engineer, Department of Road Construction N.H. Division, Bhagalpur.
6. The Assistant Engineer, Department of Road Construction N.H. Division, Bhagalpur.
7. The Junior Engineer, Department of Road Construction N.H. Division, Bhagalpur.
8. The Union of India through the Regional Officer, Ministry of Road Transport and Highways, Govt. of India, Patna.
9. The Principal Secretary - Cum - Commissioner of Commercial Taxes, Govt. of Bihar, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal &
Ms. Aishwarya Riti, Advocates
For the UOI : Mr. A.B.Mathur, CGC
For the State : Mr. Bijoy Kumar Sinha, AC to AAG-IX
For Acct. General (Audit): Mr. J.P.Karn (Sr. Adv.)

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 03-03-2016

Heard learned counsel for the petitioner and learned counsels for the State, Accountant General, Bihar and for the Union of India.

The petitioner seeks a direction upon the respondents to refund a sum of Rs. 22,10,423/- being the excess amount deducted from the sixth and seventh running account bills of the petitioner for execution of work pertaining to an agreement dated 4.3.2014 and further restraining them from making deduction of sales tax under the Bihar VAT Act, 2005 from the gross amount of running account bills and to do so strictly in accordance with Section 41 of the Bihar VAT Act read with Rule 29 of the Bihar Vat Rules, 2005 and for consequential reliefs.

So far as the issue raised by learned counsel for the petitioner in the present matter is concerned, the same is squarely covered by the directions of this Court in the order dated 7.7.2015 passed in CWJC No. 9870/2012 (M/s. Debashree Constructions (India) Pvt. Ltd. Vs. Ircon International Limited & ors. and its analogous cases. It has been clearly held by this Court in the said order that it is the obligation of the authorities to comply with the provisions of the Bihar VAT Act and the Rules and 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 which is couched in the form of injunction and violation of the same is legally impermissible. The deducting authorities were, 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 were provided to them by the petitioner-contractor or were available to them then they were obliged not to make deduction with regard to the heads mentioned therein and the TDS was to be deducted with respect to the remaining part of the bills.

In view of the aforesaid directions of this Court it is not open to any person deducting tax at source under the Bihar VAT Act to do so otherwise than directed and doing so would be a clear attempt to override the direction of this Court.

In the present matter the stand has been taken by the authorities of the National Highways Division that till the running bill No. 5 they had been making deductions at source in terms of the provisions of Section 41 of the Act read with Rule 29 but on account of the directions issued by the Accountant General, Bihar they were compelled to make deductions from the gross bills.

The stand of the Accountant General is that they have

done so on the basis of the circular issued by the Department and also the decision of this Court in the case of Abdul Majeed Khan vs. The State of Bihar & Ors. : 2010(3) PLJR 782.

In M/s. Debashree Constructions (India) Pvt. Ltd. case this Court has already taken into account the above decision of a Division Bench of this Court and no where the said decision laid down that deductions are to be made from the gross value of the bills; rather while holding the provisions of Section 41 and Rule 29 of the Bihar VAT Act and the Rules as intra vires, this Court was at pains to point out that sufficient provisions have been made so that no deductions are made beyond the powers of State Legislature to levy tax on such works contractors, relying specifically on the provisions regarding not making any deductions with regard to such payment or any part thereof which relates to such transfer of property or goods- whether as goods or in some other form- involving execution of the works contract as also where transaction in question is covered by Section 15 of the Central Sales Tax Act or Section 6 of the Act and it is only in the latter cases that the certificates of the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer are required; but not where payment does not relate to transfer of property in any goods, whether as goods or in some other form

involved in the execution of the work. Thus, it is clear that no certificate is required for not making deductions with regard to such part of the transaction as does not involve any transfer of property and there is no question of deduction on account of payment of labour charge and the person making deduction is obliged not to make deduction with respect to the part of the amount which does not relate to transfer of property, service charge, etc. enumerated in detail in Rule 29 of the Rules.

In the aforesaid view of the matter, the writ application is allowed. The impugned letter dated 18.2.2015 of the Accountant General (Audit), Bihar, in so far as it directs the deduction on the gross amount of the bill, is quashed.

The respondents are further directed not to make any deduction contrary to the provisions of Section 41 and Rule 29 of the Rules as have been explained by this Court in M/s Debashree Constructions case (supra). Any excess amount deducted by the respondents shall be refunded to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

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(Sudhir Singh, J)