IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9260 of 2015

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Kamladitya Constructions Pvt. Ltd. through its authorized signatory Abhay Kumar Mishra, son of Sri Chandrama Mishra, resident of Shankat Mochan Nagar, New Police Line, P.S. Nawada, District Ara, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar , through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Siwan, Bihar.
5. The Assistant Commissioner, Commercial Taxes Department, Gopalganj Circle, District- Gopalganj, Bihar.
6. The Executive Engineer, Saran Canal Division, Gandak Yojna, Bhore, Bihar.
7. The Executive Engineer, Saran Canal Division, Gandak yojna, Siwan, Bihar.
8. The Executive Engineer, Saran Canal Divsion, Gandak Yojna, Chapra, Bihar.
9. The Executive Engineer, Saran Canal Division, Gandak Yojna, Mairwa, Bihar.
10. The Executive Engineer, Saran Canal Division, Gandak Yojna, Ekma, Bihar.
11. The Executive Engineer, Saran Canal Division, Gandak Yojna, Maharajganj, Bihar.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.13456 of 2015

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M/s B. N. Enterprises, through its partner cum authorized signatory, Bhola Nath Prasad, son of Late Lakhi Chand Prasad, resident of village Nechua Jalalpur, P.S. Kuchaikote, District Gopalganj, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer in Chief (North), Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Samastipur, District Samastipur, Bihar.
5. The Superintending Engineer, Flood control Circle, Darbhanga, District Darbhanga, Bihar.

6. The Asistant Commissioner, Commercial Taxes Department Jhanjharpur Circle, District Madhubani, Bihar.
7. The Executive Engineer, Flood Cotrol Division No.2, Jhanjharpur, District Madhubani, Bihar.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.18980 of 2015

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M/s Czar Constructions Pvt. Ltd., (a Company Registered under Companies Act 1956), represented through its Director Ved Prakash, son of Sri Mishri Lal Yadav, having its registered office at Kali Asthan, Dirapur, Begampur, P.S. Chowk, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Bhagalpur, Bihar.
4. The Superintending Engineer, Irrigation Circle, Kharagpur, District Bhagalpur, Bihar.
5. The Executive Engineer, Irrigation Division, Tarapur (Munger), District Munger Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan

For the State : Mr. AC to PAAG

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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)

13 18-02-2016 Heard learned counsel for the petitioners and learned counsel for the State.

It is the grievance of the petitioners that the respondents are bent upon illegally deducting excess amount as tax at source contrary to the provisions of Section 41 of the Bihar

VAT Act read with Rule 29 of the Bihar VAT Rules.

In this regard it is submitted by learned counsel for the State that the matter has already been put to rest by this Court by order dated 7.7.2015 passed in CWJC No. 9870/2012 (M/s. Debashree Constructions (India) Pvt. Ltd. Vs. The IRCON International Ltd. & Ors.) and its analogous cases where it was clearly held that the provisions of the Act and the Rules have to be followed in the matter of making deductions.

Learned counsel for the petitioners, however, refers to the obstinate approach by the respondent-authorities in a counter affidavit sworn on 12.2.2016, a copy of which has been served upon learned counsel for the petitioner, in which it is stated that so far as the segregation of labour charges or services or others exempted under Article 29(2) of the VAT Laws is concerned, there may be cases where the contractor has not maintained proper accounts or the accounts maintained by him are not found to be worthy of credence by the assessing authority and as such the State has devised ways and means to provide 5% (present rate) from the overall bills of the work contracts.

Learned counsel for the State submits that although the said supplementary counter affidavit was sworn but he is only filing the same today in the Court since the petitioner has raised it and he was not inclined to file the same rather upon further discussions with the respondent-authorities it has clearly transpired that they will abide by the decision of this Court in M/s. Debashree Constructions (India) Pvt. Ltd. case (supra) and any deduction which is permissible to the petitioner shall be permitted before the tax is deducted at source from the bills of the petitioners.

In view of the aforesaid clear stand of the respondents, as also observations and directions of this Court in M/s. Debashree Constructions (India) Pvt. Ltd. case (supra), the writ application is disposed of in the same terms as that case.

It is needless to say that the interim order passed earlier shall stand vacated.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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