IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22500 of 2014

==

M/s Rai Raj Construction Pvt. Ltd. through its Managing Director Sri Baidya Nath Rai, S/o Late Mahendra Rai, Head office at PO & PS. Desari, District Vaishali Branch office at House No. X-8, Ashiana Nagar, Opp. to Jagat Enclave, Patna 25.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Road Construction Department, Govt. of Bihar, Bishwashraiya Bhawan, Bailey Road, Patna.
2. The Superintending Engineer, RCD, Saran Road Circle- Camp. Office, Vaishali, at Hajipur.
3. The Executive Engineer, Vaishali Road Division, R.C.D, Vaishali at Hajipur.
4. The Senior Accounts Officer, Vaishali Road Division, R.C.D, Vaishali at Hajipur.

.... Respondents

==

Appearance :

For the Petitioner : Mr. Suresh Pd Singh No.1
Mrs. Kumari Rashmi, Advocates

For the Respondents: None

==

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 01-03-2016

The present writ petition has been filed for quashing the order contained in Memo No. 560 dated 28.05.2014 (Annexure-5) issued by the respondent no. 3 by which he has unilaterally ordered to deduct the amount of service tax to the extent of 12.36% out of the total bills paid to the petitioner.

2. Learned counsel for the petitioner submits that such deduction made pursuant to the service tax from the bills of the petitioner is wholly illegal and unsustainable in the backdrop of the Notification No. 12/2012-Service Tax dated 17th March, 2012 issued by the Government of India, Ministry of Finance (Department of Revenue) exempting taxable services from the whole of the service

tax leviable thereon including the 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. He submits that the issue is squarely covered by a decision of a Division Bench of this Court vide order dated 28.07.2015 passed in CWJC No. 7694 of 2015 *(M/s Rishi Builders India Pvt. Ltd. vs. The State of Bihar & others)* and analogous cases.

3. None appeared on behalf of the respondents when the matter was called out yesterday and once again the respondents are not represented today.

4. A counter affidavit filed on behalf of the respondents is on record, on a perusal of which, however, it does not appear that the stand of the petitioner with regard to its eligibility for exemption in terms of the aforesaid Notification No. 12/2012-Service Tax dated 17th March, 2012 has been controverted.

5. The Division Bench disposed of the aforesaid batch of writ petitions with the following observations:-

> *"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."

6. In the above view of the matter, the impugned order dated 28.05.2014 (Annexure-5) is quashed and the present writ petition is disposed in line with and on the same terms as the order dated 28.07.2015 passed in CWJC No. 7694 of 2015 *(M/s Rishi Builders India Pvt. Ltd. vs. The State of Bihar & others)* and analogous cases.

(Vikash Jain, J)

B.T/-

U			