IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1977 of 2016

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JMC Projects (India) Ltd. a company incorporated under the Companies Act, 1956 having its Corporate office at Kalpatru Synergy, Opp. Gran Hyatt, Santacruz (East), P.O. + P.S. Santacruz, Mumbai- 400055 and its site office at Barauni Thermal Power Station, P.O.+ P.S.- Barauni Thermal Power, District- Begusarai- 847237 through its Sr. Dy. General Manager-Indirect Taxation, Kali Prasad Shaw, Son of Late A.L. Shaw, resident of Flat No. 703, Wing-C, Akruli Road, Plot No. 16, Lohkhandwala Foundation School, Anita Vihar, Kandivali (East), P.O. + P.S.- Samta Nagar, Mumbai

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. RITES Limited, a Government of India Enterprise having its office at RITES Bhawan, Flat No. 2, Sector- 29, Gurgaon (Haryana) and Site office at Central University of South Bihar Campus, Panchanpur, Gaya

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate with M/S Manju Jha, Ram Naresh Jha, Advocates
For the State	:	Mr. Vikash Kumar, AC to PAAG
For RITES	:	Mr. Daya Shankar Prasad Sinha, Advocate

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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 19-04-2016 Heard learned counsel for the petitioner and learned counsels for the State and for the respondent No.2 RITES Limited.

The writ application has been filed for quashing the order dated 7.10.2015 passed by respondent No.2 and further for a direction to deduct tax at source at prescribed rates only on the value of materials used in the execution of the works contract.

The petitioner is a contractor for execution of works contract of respondent No.2 and in the course of execution of works contract, from the pending bills of the petitioner tax at source has been deducted by the respondent at the prescribed rate but without giving benefit to the petitioner as provided under Section 41 of the Bihar VAT Act, 2005 read with Rule 29 of the Bihar VAT Rules, 2005. Aggrieved by the same the petitioner made representation before the authorities of respondent No.2 but the same has been rejected by letter dated 7.10.2015 (Annexure-3) referring to various paragraphs of the NIT and the clauses of the contract agreement.

Learned counsel for the petitioner submits that the petitioner does not challenge the authority of respondent No.2 to make deduction of sales tax/VAT at source but the same has to be done in accordance with the provisions of the Act and the Rules. It is further submitted that it is not open to the respondents to rely upon the clauses of the contract which, as a matter of fact, do not permit them to deduct tax at source contrary to the provisions of the Bihar VAT Act and Rules.

Learned counsel for the respondent RITES Limited submits that there is provision in the contract itself for the redressal of the grievances in the matter by reference to Arbitration and whatever deduction has been made the same has been done under the provisions of the agreement and it is not open to the petitioner to challenge the action of the respondents by filing a writ petition. Learned counsel also seeks to rely upon a decision dated 23.7.2014 of the Jharkhand High Court in the case of Triveni Engicons Pvt. Ltd. vs. The State of Jharkhand & Ors. in support of the aforesaid contention.

Learned counsel for the petitioner in support of his stand relies upon a decision of this Court dated 7.7.2015 passed in CWJC No. 9870 of 2012 [M/s. Debashree Constructions (India) Pvt. Ltd. vs. The IRCON International Ltd. & Ors.] and its analogous cases in which this Court had clearly laid down 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 from the entire amount of the bills without giving the benefit as provided under the Act and the Rules. It is also pointed out in the said decision that the said provision is in the form of injunction and violation of the same is legally impermissible. This Court also directed the authorities 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 are provided to them by the petitioner-contractor or are available to them then they shall be obliged not to make deduction with regard to the heads mentioned therein and the TDS shall be deducted only with respect to the remaining part of the bills.

So far as reliance of learned counsel for respondent No.2 on the decision of the Jharkhand High Court in the case of Triveni Engicons Pvt. Ltd. (supra) is concerned, the same is under different provisions of the Jharkhand VAT Act and Rules and the Court had specially stated that the Scheme of the Jharkhand VAT Act being self contained, stands on a different footing and further the Court also referred to the fact that in view of the various provisions of the Act under the VAT regime there was no question of the dealers waiting for years to get back the refund of any excess amount deducted from him.

Thus, it is evident that it is not open to respondent No.2 to rely upon the decision of the Jharkhand High Court in which very different provisions have been enacted. Moreover, the decision of this Court in relation to deduction of tax at source under the provisions of the Bihar VAT Act and Rules would have binding effect on all authorities within the State and thus no benefit can be derived from any other decision of any High Court in the matter.

So far as the reliance of learned counsel for the respondent No.2 on the provisions of contract with regard to Arbitration is concerned, the same could have no relevance when the petitioner is not aggrieved by mere deduction of VAT at source rather the grievance of the petitioner is only with regard to illegal deduction of tax under the provisions of the Bihar VAT Act and the Rules. Under the said circumstances, the petitioner cannot be relegated to

Arbitration or any other provision prescribed under the contract. The letter/order dated 7.10.2015 is, accordingly, quashed.

This Court further directs the respondent No.2 not to make any deduction of tax at source under the Bihar VAT Act and the Rules contrary to what has been laid down by this Court in the case of M/s. Debashree Constructions (India) Pvt. Ltd.(supra) and in case any excess amount has been deducted from the previous bills of the petitioner, the same should be adjusted in the future bills while making deduction of VAT at source.

The writ application is, accordingly, disposed of with the aforesaid directions and observations.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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