# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.20590 of 2016**

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1. Lalan Kumar Singh Son of Shri Ram Balak Singh, Resident of Dihpar, P.S.-Birpur, Distrit-Begusarai
2. M/s Aastha & Souma Corporation, through its Partner Sunil Kumar Son of Chandrabhushan Prasad Singh, Resident of Village-Bhairwar P.S.-Matihani, District-Begusarai
3. M/s Vinayak Construction, through its Proprietor Kharga Narayan Singh Son of Shri Krishna Dev Prasad Singh, Resident of Village-Manjhaul, P.S.-Cheriya Bariyarpur, District-Begusarai
4. M/s R.K. Construction through its Partner, Harishankar Prasad Son of Shri Ram Naresh Prasad Singh, Resident of Village-Ratanpur, P.S.-Town Begusarai District-Begusarai
5. Sai Nexgen Compucous pvt. Ltd. through its Partner Amit Kumar Son of Niranjan Kumar Singh, Resident of Nakti tola, Ramdiri, P.S.-Matihani, District-Begusarai
6. Ganga Yamuna Construction through its Proprietor Rajesh Kumar Son of Bijay Kumar Singh, Resident of Maheshwara, P.S.-Nawkothi, District-Begusarai

.... .... Petitioner/s

Versus

1. The State of Bihar, through its Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Rural Works Division, Government of Bihar, Patna
3. The Engineer-in-Chief, Rural Works Division, Bihar, Patna
4. The Chief Engineer, 3-R.W.D, Bihar
5. The Superintendent of Engineer, R.W.D., Work Circle, Samastipur
6. The Executive Engineer, R.W.D., Works Divisions, Begusarai
7. The Accounts Officer, R.W.D., Works Division, Begusarai

.... .... Respondent/s

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**Appearance :**

For the Petitioners : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Anuj Kumar, Advocate

For the State : Ms. Archana Meenakshee, GP-6
Mr. Karandeep Kumar, AC to GP-6

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

**Date: 07-02-2017**

The challenge in the present writ petition is to the Section 7 of the Bihar Value Added Tax (Amendment) Act, 2016 (Bihar Act No.10 of 2016) whereby Section 41 of Bihar Value Added Tax Act, 2005 (for short "the Act") was amended so as to substitute words, "five percent" used in sub section (1) of Section 41 to be read as "eight percent".

2. Learned counsel for the petitioners raised three fold arguments; (i) that the agreements in pursuance of which the petitioners executed works contract contemplated 5% deduction of the tax, therefore, the amendment in the statute will not be applicable in respect of the agreements already entered into between the parties; (ii) that the revised deduction @ 8% will not be applicable in respect of works already completed; and (iii) that the petitioners are entitled to deduction as is permissible in terms of Rule 29 of the Bihar Value Added Tax Rules, 2005 (for short, 'the Rules').

3. We have heard learned counsel for the petitioners and find no merit in the present application.

4. The liability to pay tax is statutory and the amending

Act published on 12th August, 2016 now contemplates that the tax will be deducted @ 8%. Any agreement executed and contemplating 5% tax will stand substituted in view of the statute as the liability of every person responsible for making any payment in discharge of any liability on account of valuable consideration is to deduct tax @ 8%. Therefore, even if the agreement contemplates 5% deduction of tax, but by virtue of the statute the liability of the person making payment is now 8%, thus, the terms of the agreement will not nullify the statutory provisions.

5. In respect of an argument that the works completed prior to 12th of August, 2016, there shall not be deduction @ 8% is again not tenable. The relevant date for deduction is the date for payment. If the date of payment is on or after 12th of August, 2016, 8% of the amount has to be deducted in terms of Section 41 of the Act. Therefore, the completion of work prior to the amendment is irrelevant for the purposes of deduction of tax.

6. In respect of the third argument that the petitioners are entitled to deductions under Rule 29 of the Rules, we do not wish to examine the said aspect. If the petitioners are entitled to any deduction in terms of the Rules, it is needless to say that the Department will grant benefit of such deductions in accordance with law.

7. In view thereof, we do not find any merit in the present writ application. The same is dismissed.

**(Hemant Gupta, ACJ)**

**(Sudhir Singh, J)**

Narendra/-

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