IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8886 of 2017

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M/s Sincon Infrastructure Pvt. Ltd. a Company incorporated under the Indian Companies Act, 1956 having its registered office at LG-12 & 2, Majestic Plaza, West Boring canal Road, Patna-12, through its Director Sri Tarun Kumar, Son of Sri Kartik Kumar, resident of Majestic Plaza, West Boring Canal Road, Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Road Construction, Department Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Road Construction Department, Government of Bihar, Patna
4. The Executive Engineer, Road Construction Department, Road Division, Madhepura.
5. The Executive Engineer, Road Construction Department, Road Division, Khagaria.
6. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 12-07-2017

Petitioner has been awarded a contract for construction of road and in the matter of grant of benefit of deduction in terms of Sub-rule (2) of Rule 29 of the Bihar Value Added Tax Rules, 2005, the principle has been laid down in the case of the petitioner themselves by a Division Bench of this Court in Civil Writ Jurisdiction Case No.6993 of 2015 vide order passed on 07.07.2015 and in the said case, the following directions have been issued.

> "Be that as it may, it is the obligation of the authorities to comply with the provisions of the Act and the Rules. 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. The same in fact is in the form of injunction and violation of the same is legally impermissible. The deducting authorities are, 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 are provided to them by the petitioners-contractors 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. Any attempt by the tax authorities to compel full tax deduction at source is to be condemned. The provisions of law must be strictly followed by the authorities concerned.
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> It is pointed out by learned counsel for the petitioners that despite the interim order of this Court to the deducting authorities not to make any deduction on the petitioner providing them the details, the authorities of the State have continued to make full deduction. In case the authorities making the deduction of tax have not given the benefit to the petitioners, on the basis of details provided by them, then they shall ensure that not only such deduction are made in all future bills but also even with regard to the past bills if they failed to give the benefit of such deduction under Section 41

of the Act and Rule 29 of the Rules then the amount shall be adjusted in the future bills.

The writ applications are, accordingly, disposed of with the aforesaid observations and directions."

The grievance of the petitioner now is that even though with regard to the work executed by the petitioner based on which the earlier writ petition was decided, now while executing various subsequent agreements, the said principle is not being followed and the representations made to the respondents-Executive Engineer are not being complied with.

It is the case of the petitioner that merely because the agreement, which was subject matter of adjudication in earlier writ petition, has come to end that does not mean that the said principle of law laid down by the Division Bench of this Court will not apply in the subsequent works or contract.

We find much force in the aforesaid submission made by the learned counsel for the petitioner, but at the same time, the Executive Engineer before whom representation of the petitioner, Annexure-P/7 is pending is required to take note of the observations made by the Division Bench of this Court in the earlier writ petition, as is reproduced hereinabove, and thereafter proceed to take action in the matter and decide the representation of the petitioner.

Accordingly, we direct the Executive Engineers, respondent Nos.4 and 5 to take note of the principles of law laid down in CWJC No. 6933 of 2015 reproduced hereinabove and proceed to take action on the representation of the petitioner accordingly, failing which the petitioner shall have liberty to challenge the action of the Executive Engineer in accordance with law. The Executive Engineer shall take action, as directed above, within 15 days on filing of a certified copy of this order by the petitioner.

With the aforesaid, the writ petition stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.07.2017
Transmission Date	