IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15084 of 2018

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Satyendra Kumar Construction Pvt. Ltd. 202, Hera Enclave, New Dakbunglow Road, PS- Kotwali, Patna- 800001 through its Director, Deepak Kumar, son of Sri Narayan Prasad, resident of Bhikhna Pahari, opp. Patel Hostel, P.S.-Pirbahote, District-Patna.

... ... Petitioner/s

Versus

1. The Commissioner, Custom Central Excise and Service Tax having its office at Annexe C.R. Building, Beer Chand Patel Marg, Patna.
2. The Bihar State Educational Infrastructure Development Corporation Ltd., Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna-800004.
3. The Managing Director, Bihar State Educational Infrastructure Development Corporation Ltd., Shiksha Bhawan, Bihar Rashtrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna-800004.
4. The Chief Engineer, Bihar State Educational Infrastructure Development Corporation Ltd., Shiksha Bhawan, Bihar Rastrabhasa Parishad Campus, Acharya Shiv Pujan Sahay Path, Saidpur, Patna-800004.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Archana Sinha, Advocate.
		Ms. Manisha Singh, Advocate.
For the Respondent-Customs	:	Mr. Anshuman Singh, CGC.
For the Respondent-BSEIDC	:	Mr. Girijesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date : 17-01-2019

Heard Ms. Archana Sinha, learned counsel appearing for the petitioner, Mr. Anshuman Singh, learned Central Government Counsel for the Customs, Central Excise and Service Tax department and Mr. Girijesh Kumar, learned counsel appearing for the Bihar State Educational Infrastructure Development Corporation Ltd. (hereinafter referred to as 'the Corporation') and its authorities.

The writ petition was filed for issuance of a writ/order/direction in the nature of mandamus directing the respondents to reimburse/refund the service tax paid by the petitioner in view of the exemption granted by the Government of India vide Notification No.25 of 2012 dated 20.06.2012, a copy of which is enclosed at Annexure-3 to the writ petition.

The petitioner while making such prayer relies upon a Division Bench opinion of this Court rendered in the case of **Shapoorji Paloonji & Company Pvt. Ltd. vs. Commissioner, Customs Central Excise and Service Tax** arising in CWJC No.16965 of 2015, a copy of which is enclosed at Annexure 6 to the writ petition.

This matter was heard last on 10.01.2019 when Mr. Anshuman Singh, learned counsel for the Customs, Central Excise and Service Tax department and Mr. Girijish Kumar, learned counsel appearing for 'the Corporation' in reference to the notification so relied upon by the petitioner itself, a copy of which is enclosed at Annexure-3 to the writ petition, in particular reference to Clause 12A submitted that the exemption claimed by the petitioner is extendable only to such of the contract which was entered into between the parties prior to 01.03.2015 and since the contract between the parties in the present case is after the cut of date, the petitioner was not entitled to the exemption so prayed.

It is submitted that indisputably the contract between the parties has taken place subsequent to the cut of date as manifest from the agreement dated 05.05.2016 at Annexure-1 and hence the petitioner is not entitled to the benefit under the notification.

It is on the request made by the learned counsel for the petitioner that the matter was adjourned and has been taken up today when an interlocutory application bearing I.A. No.01 of 2019 is filed and now the petitioner claims refund in terms of Clause 35 of the general conditions of the contract entered in between the parties, the extract of which is enclosed with Annexure-1 at running page 18.

According to Ms. Sinha, learned counsel appearing for the petitioner, the petitioner is yet entitled to refund of the service tax.

Mr. Girijesh Kumar, learned counsel appearing for 'the Corporation' yet opposing the relief has submitted that in terms of the contract, the agreed rates were inclusive of taxes and levies and it is only where such taxes/levy got enhanced under any statute during the period of contract that such differential amount of tax/levy, on account of enhancement, if paid by the contractor was refundable by employer. According to Mr. Girijesh Kumar, even Clause 35 does not come to the rescue of the petitioner rather binds them.

We have heard learned counsel for the parties and we have perused the records and though the submissions of Mr. Girijesh

Kumar appears reasonable and acceptable but since no counter affidavit is filed to support such submission by ‘the Corporation’ and a representation in this regard is on record at Annexure-5 dated 12.10.2017 whereunder the petitioner placing reliance on Clause 35 of the general conditions of contract has sought for reimbursement of service tax amount, we would direct the Managing Director of the ‘Corporation’ to dispose of the representation by a speaking order to be passed within three months from receipt/production of a copy of this order.

This disposes of the writ petition as well as the interlocutory application.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Skpathak/Anjula

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.02.2019
Transmission Date	NA