IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2369 of 2016

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Hanumant Construction Pvt. Ltd., Ground Floor, Parwani Complex, Opp. District Judge Bunglow, Civil Lines, Raipur - 492 001 (C.G.) and local office is situated At and P.O. Babhana, Ward No. 01, P.S. and District Jehanabad (Bihar) through its General Manager (Project) and Authorized Signatory Priyaranjan B. Sharma son of Sri Baleshwar Sharma At and P.O. Babhana, Ward No. 01, P.S. and District Jehanabad (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Patna.
2. The Executive Engineer, Water Ways Division, Uderasthan, Jehanabad.
3. The Commission-cum-Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
4. The Deputy Commission of Commercial Taxes, Jehanabad Circle, Jehanabad.
5. The Deputy Commissioner, State Taxes, Jehanabad Circle, Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Agrawal
For the Respondent/s : Mr. Lalit Kishore- PAAG

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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 : 10-01-2019

Heard Mr. Ramesh Kumar Agrawal, learned counsel for the petitioner and Mr. Vikash Kumar, SC-11, learned counsel appearing on behalf of the State.

It is complaining of illegal deductions towards Works Contract Tax by the State while making payment of the Bills of the petitioner, which according to him is *de hors* the legal position settled by this Court in the case of M/s Debashree

Constructions (India) Pvt. Ltd. Vs. The IRCON International and others arising from CWJC No. 9870 of 2012 that the petitioner is before this Court.

The petitioner, a Civil Contractor, approached this Court when certain deductions towards Works Contract Tax in purported exercise of powers vested in the requisitioning authority under Section 41 of the Bihar Value Added Tax Act, 2005 and the rules framed thereunder were made. According to the petitioner the employer was deducting the tax from the bill of the petitioner without having regard to the stipulations present in the Rule 29(2) of the Rules which prohibited deductions in respect of the items mentioned thereunder.

It is making reference to the decision of this Court passed in C.W.J.C. No. 9870 of 2012 (M/s Debashree Constructions (India) Pvt. Ltd. Vrs. The IRCON International Ltd. and others), that the Division Bench of this Court vide order passed on 12.02.2016 reminded the authorities in the Commercial Tax Department/Water Resources Department of their obligation cast under section 41 of the Bihar Value Added Tax Act read along side Rule 29(2) of the Rules framed thereunder.

It is the grievance of the petitioner that despite this caution given by this Bench on 12.02.2016, they have continued deductions de hors the statutory rule and even after the enforcement of the Goods and Services Tax Act, 2017 with effect from 01.07.2017.

Mr. Agrawal, learned counsel appearing on behalf of the petitioner has invited our attention to the details given at paragraph-9 of the rejoinder at running page 159 to demonstrate the deductions made by the authorities in the Commercial Tax Department even after the order passed by this Court on 12.02.2016, which according to Mr. Agrawal is not lawfully supported rather is in the teeth of the prohibition present in the Rule 29(2) of the rules framed under 'the Act'.

Mr. Vikash Kumar, learned SC-11 informs that the assessment proceedings is pending for the period in question and where all the issues which are being canvassed by Mr. Agrawal to question the exercise of power by the requisitioning Department concerned to deduct Works Contract Tax at source from the bills admissible to the petitioner can be raised by the petitioner.

Mr. Agrawal does not dispute the position that the assessment proceeding is pending but he complains that it is being unnecessarily delayed.

In the circumstances notes above where the assessment proceeding is yet pending, we refrain from expressing our opinion at this stage as to whether the deductions have lawful support or the petitioner is entitled to refund in view of the legal position settled by this Court in the case of Debashree Constructions (supra). Considering the status of the matter, we are satisfied to record that for the present appropriate direction can be given to the Assessing Authority i.e. Deputy Commissioner, State Tax, Jehanabad Circle to conclude the assessment proceeding expeditiously but then we note that he is not a party to the proceeding.

We thus, while giving leave to Mr. Agrawal to add the Assessing Authority, as respondent no. 5 to the present proceeding during the course of the day, would direct the assessing authority i.e. the newly added respondent no. 5, the Deputy Commissioner State Taxes, Jehanabad Circle, Jehanabad to conclude the assessment proceedings in accordance with law expeditiously and preferably within three months from today. It goes without saying that the petitioner would ensure his representation either by himself or through his authorized representative and would participate in the proceeding on day-to-day basis without taking undue adjournment, which caution also applies to the department concerned as well.

It again goes without saying that the petitioner shall be allowed to raise all issues as canvassed before this Court by Mr. Agrawal, some of which stands noted above, and the assessing authority would be well advised to examine the same while passing his order on the assessment proceeding.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2019
Transmission Date	NA