IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1466 of 2020

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1. M/s Akash Auto Planet Mahindra Authorized Service Centre, Station Road, Near Rest House, District- Jamui.
2. The Proprietor , M/S Akash Auto Planet Mr. Santosh Kumar Son of Satyadeo Prasad Singh, Resident of Village and Post- Kharsari, P.S. and District- Jamui.

... ... 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 Superintending Engineer, Road Construction Department, East Bihar Circle, Bhagalpur.
4. The Executive Engineer, Road Construction Department, Road Division, Jamui

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dipak Kumar, Advocate
For the Respondent/s : Mr. Amit Prakash (GA-13)

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 23-01-2020 Heard learned Counsel for the petitioners and State.

Petitioners pray for the following reliefs:-

(i) Issuance of an order, direction or writ in nature of Mandamus directing the respondent authorities to refund the deducted amount of service tax from the bill of the petitioner.

(ii) Issuance of an order, direction or writ in nature of Mandamus directing the respondent authorities not to deduct service tax in future from any of the bill/bills of the petitioner.

(iii) Any other relief or reliefs as the petitioners may be found entitled to in the facts and circumstances of the case.

Learned Counsel for the petitioner invites our attention to the order dated 28.07.2015 passed in CWJC No. 7694 of 2015 titled as M/s. Rishi Builders India Pvt. Ltd. Vs. The State of Bihar and Ors. and other analogous cases and prays for disposal of this case in terms thereof. The aforesaid order in toto runs as under:-

> "Heard learned counsels for the petitioners and learned counsels for the State.
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> All these writ application raise common issue and they have accordingly been heard together and are being disposed of by this common order.
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> The petitioners in these writ applications seek a direction on the respondents to refund the deducted amount of service tax from the bills of the petitioners which has been wrongly deducted contrary to Clause 13(a) of the Notification No. 12/2012-Service Tax dated 17th March, 2012 issued by the Government of India, Ministry of Finance (Department of Revenue) and for consequential direction restraining the respondents from deducting the service tax in future.
>
> All the petitioners are contractors

executing different works under different contracts entered into with the Road Construction Department, Government of Bihar in different circles and divisions. While paying the bills of the petitioners the authorities of the Road Construction Department had been deducting service tax from the same at the rate of 12.36%. The stand of the petitioners is that such deduction is not permissible in view of the General Exemption granted by the Government of India by the aforesaid Notification No.12/2012-Service Tax dated 17th March, 2012 issued by the Government of India, Ministry of Finance (Department of Revenue) in which it is provided that in exercise of power conferred by Section 93(1) of the Finance Act, 1994 the Central Government exempts taxable services from the whole of the service tax leviable thereon under Section 66B of the Finance Act which includes services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of road, bridge, tunnel or terminal for road transportation for use by general public under paragraph 13(a) of the said Notification. The petitioners have been executing different contracts for the construction and maintenance of the roads under the Road Construction Department and they are aggrieved by the action of the respondent authorities in making continuous deductions of service tax from their bills despite the exemption notification.

In the counter affidavits filed on behalf of the respondents the stand taken is that the Estimated Cost Value (ECV) for the different works was prepared after including service tax at the rate of 12.36% of the total cost of work on which the tender was floated including the service tax and in support of the same certain materials have been brought on the record and for the said reason the amount of service tax at the rate of 12.36% which was included in the cost of work was being deducted from the bills of the petitioners.

On the other hand, learned counsels for the petitioners submits that neither in the Notice Inviting Tender nor in the BOQs any mention has been made of the inclusion of service tax at the rate of 12.36% or at any other rate. Moreover, it is submitted that tax can only be collected under the authority of law and in view of the aforesaid Notification it is not permissible for the respondents to deduct service tax irrespective of the fact that they had included it in their BOQs in the tender.

Learned counsels for the State are unable to justify the action of the respondents as to under what authority of law the deduction of service tax is being made by them in view of the general exemption granted by the Notification dated 17.3.2012.

It is well settled that under Article 265 of the Constitution of India no tax shall be levied or collected except by authority of law. In view of the exemption it is evident that the respondents have no authority to collect service tax which is not at all leviable under the law.

In the aforesaid view of the matter, all the writ applications are allowed and the concerned respondents are directed to refund the entire amount of service tax deducted from the bills of the petitioners after the issuance of the aforesaid Notification dated 17.3.2012. They are further restrained from collecting any such tax from the bills of the petitioners or any other contractors in future so long as the said exemption remains in operation."

As such, as prayed for, on mutually agreed terms, we dispose of the present petition in terms of the aforesaid order making the terms contained therein, applicable mutatis mutandis insofar as applicable, also to the instant petition.

Respondents are directed to consider the representation dated 09.09.2019 filed by the petitioners, as contained in Annexure-5, in the light of the aforesaid order.

No order as to costs.

Petition stands disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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