IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3301 of 2010

The Braithwaite Burn & Jessop Construction Limited (A Government of India undertaking) a Company Incorporated under the Provisions of Companies Act,1956 Having its Registered office situated at 27, Rajendra Nath Mukherjee Road, Kolkatta-700001,Through Its Authorized Signatory, Rajiv Kumar Singh, S/O Shri Tara Prasad Singh, R/O Vill Chatmadih, P.O.Chatmadih, Distt-Bhagalpur, Bihar.

... ... Petitioner/s

Versus

1. The East Central Railway having its office situated at Hajipur, Distt-Vaishali Through its General Manager.
2. The Chief Administrative Officer (Construction) East Central Railway Mahendru Ghat, Patna-4.
3. The Chief Engineer (Cons. and G.B.) East Central Railway Mahendru Ghat, Patna-4.
4. The Chief Engineer (Cons.) East, East Central Railway, Mahendru Ghat, Patna-4.
5. The Deputy Chief Engineer/Con/3, East Central Railway Hajipur, Distt-Vaishali.
6. The State of Bihar Through The Principal Secretary-Cum-Commissioner of Commercial Taxes, Government of Bihar, Patna.
7. The Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.
8. The Deputy Commissioner of Commercial Taxes, Munger Circle ,Munger.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Prakash Kumar
For the Respondent/s : Mr.Aag3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-08-2020

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

Petitioner has prayed for following reliefs:-

(I) For a declaration that Section 41 of the Bihar VAT Act, 2005 to the extent it provides for deduction of advance tax on the Bills of Works Contractor without providing for Input Tax Credit and set off of Entry Tax on the goods used in execution of the Works Contract is ultravires to the provisions of the Constitution of India.

(II) For a declaration that Rule 29 of the Bihar VAT Rules, 2005 is ultra vires as it does not provide for any mechanism for excluding the amount of tax paid by the Works Contractor for purchase of the goods which has been used in execution of Works Contract.

(III) For issuance of a writ in the nature of MANDAMUS, directing the Respondents not to deduct the advance tax against the liability of Bihar Value Added Tax from out of the bills/invoices raised by the petitioner against the execution of works contract assigned by Respondents in violation of the provisions of law contained in Section-41 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the Act) read with Rule-29(2) of the Bihar Value Added Tax Rules, 2005 (hereinafter referred to as the Rules).

(IV) For issuance of a writ in the nature of MANDAMUS, directing the Respondent Commercial Taxes Department and its Authorities to refund the amount illegally deducted against the purported liability of Value Added Tax from out of the bills of the petitioner which is barred in terms of the provisions of law incorporated under Section- 41 read with Rule 29 of the Act and Rules respectively, as aforesaid.

(V) For issuance of a writ in the nature of declaration that the petitioner is entitled to refund of the entire excess amount of tax deducted by the respondents in advance from out of the bills raised by the petitioner as the same being illegal, arbitrary and without jurisdiction; and for other relief(s) for which the petitioner may legally be found entitled to in the facts and circumstances of the present case.

The issue raised in this writ petition stands decided by a Division Bench of this Court by order dated 21.05.2010 passed in C.W.J.C. No. 9885 of 2008 and other analogous matters and present writ petition is accordingly disposed of in same terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.