IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19473 of 2016

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Daisy Kumari, Daughter of Santosh Kumar, Resident of House No. 126, Bag Dulhan, Hajipur, P.S.- Hajipur, District- Vaishali.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Government of Bihar, Patna
2. The Principal Secretary, Rural Work Department, Government of Bihar, Patna.
3. The Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Works Division, Chapra-2.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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

Date : 04-02-2021

Petitioner has prayed for the following relief(s):-

> "1.(i) Issuance of an appropriate writ in the nature of Mandamus directing and commanding the respondents not to make flat deduction at source of value added tax at the rate of 8% from the bills of the petitioner relating to execution of the works contract as the same is contrary to the provisions of proviso to sub-section 2 of section 41 of the Bihar Value Added Tax Act, 2005 as also the Proviso to Sub-rule 2 of Rule 29 of Bihar Value Added Tax Rules,

2005.

(ii) Issuance of further writ in the nature of Mandamus directing and commanding the respondents to refund the amount of Tax which has illegally been deducted from the bills of petitioner at enhanced rate (effective from 12.8.16) on the entire amount of bills including the item exempted under Rule 29(2) of the Bihar Value Added Tax Rules, 2005, without there being any Authority in law.

(iii) Issuance of an appropriate direction to re-imburse the excess tax deducted in pursuant to clause 35 of the Agreement including 3% excess deducted.

(iv) Issuance of further direction that excess deducted tax beyond 5% either be re-imbursed or it be adjusted in due bills to be submitted by petitioner because flat 8% has been deducted from total bill of Rs. 26,02,775=00 when it would have been deducted over a sum of Rs. 9,85,055=00 comes under taxable items out of total bills of Rs. 26,02,775=00.

(v) Issuance of further direction to Respondents to follow the provisions of the Bihar Value Added Tax Act, 2005 and Rules made there under, as also the Notification dated 22.06.2005.

(vi) Any other relief or reliefs be granted to petitioner to which she is entitled to in accordance with law."

The matter was heard for some time.

As prayed for on behalf of both the parties, the present petition stands disposed of in the following mutually agreeable terms:

(a) The petitioner shall approach the Assessing Officer [Deputy Commissioner of Commercial Taxes] on 22nd of February, 2021 at 10:30 A.M. along with all objections/documents and materials in support of his case;

(b) an endeavour shall be made by the Assessing Officer to resolve the issue raised by the petitioner, subject matter of the present petition, accounting for all the materials, as per the statutory provisions;

(c) if possible, the petitioner shall be allowed to file a revised return;

(d) Shri Vikash Kumar, learned Standing Counsel No. 11 states that an endeavour of resolving the issue shall be taken by the Assessing Officer;

(e) as and when such steps are taken by the assessee, the decision thereupon shall be taken at the earliest and not later than four weeks thereafter;

(f) independent thereof, the Assessing Officer shall try to resolve all the pending issues inter se the parties so as to build mutual trust, faith and confidence in the mind of the petitioner;

(g) liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law, including filing a fresh petition on the same and subsequent cause of action;

(h) we are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(i) Needless to add, while considering the case of the petitioner, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(j) the issue as to whether any amount stood deducted or deposited with any one of the authorities shall also be examined by the Assessing Officer.

(k) we have not expressed any pinion on merits. All issues are left open;

(l) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Shri Vikash Kumar, learned Standing Counsel No. 11 undertakes to communicate the order to the Assessing Officer within next two working days.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/P.K.P

AFR/NAFR	
CAV DATE	
Uploading Date	05.02.2021
Transmission Date	