IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9304 of 2023

M/s Singh Construction Company, having its Head Office at 4028, Phase II, Urban Estate, Patiala-147002, Punjab and Local Office-House No.114. Pragati Nagar, Ward No. 30, Rahika Madhubni- 847238, (Bihar), through its authorized Representative Anil Kalra, aged about 39 Years, Gender-Male S/o Ved Prakash Kalra C/o Ved Prakash Kalra, 1358, P.S. Urban Estate, Phase-2 Patiala State (Punjab) 147002.

... ... Petitioner/s

Versus

1. The Union of India through its Chairman, Central Board of Indirect Taxes, North Block, Secretariat Building, New Delhi.
2. The Commissioner, CGst and CX, Patna-II, CTTC Building, 3rd Floor, Sanchar Parishad, Buddha Marg-Patna-1.
3. The Superintendent (A.E.) CGST, EXHqrs. Patna Respondents

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Singh, Advocate
For the Respondent/s	:	Dr. K.N.Singh, A.S.G. Mr. Anshuman Singh, Advocate Mr. Shivaditya Dhari Sinha, Advocate Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

6 06-10-2023 Heard the parties.

2. The petitioner challenges Annexure-13 order passed by the Department levying service tax on the petitioner for the years 2015-16 & 2016-17.

3. The petitioner submits that he is entitled to exemption since the entire quantum of receipts taken by the Department for the purpose of levying tax relates to the construction carried out of a road, for the State of Bihar, as per

the contract obtained from the Road Construction Department, Road Division, Araria as evident from Annexure-2. The petitioner submits that since his work is exempted, he is entitled to invoke the writ jurisdiction under Article 226 of the Constitution of India.

4. A notice was issued to the petitioner as per Annexure-9 which specifically spoke of the tax deduction at source made from the receipts of the petitioner and sought an explanation as to why service tax should not be levied. The petitioner has filed reply, as is seen from Annexure-10, but, without any details, as to the tax deduction at source and the contract receipts from which such deductions were made. A further notice was issued at Annexure-11, which was replied by Annexure-12,again with the bland statement that the service related to construction of a road which is entirely exempted under Annexure-1. It is hence, Annexure-13 order was passed. The petitioner was given sufficient opportunity to produce the details, which he did not.

5. We notice that Annexure-13 is an order, which is appealable, against which no appeal has been filed as of now. We also do not have any sufficient material to find the deduction having been made on a road construction, except for the

communication regarding an award of contract as seen from Annexure-2. The petitioner has to establish his case with the production of invoices, tax deduction details and also the copy of the agreements, which he can very well do in an appeal.

6. We find absolutely no reason to entertain the writ petition. However, remedy of appeal is left open and if the appeal is filed within a period of one month from today, the appellate authority shall deem the same to be a properly instituted appeal and consider it on merits.

7. With the aforesaid direction, this writ petition is dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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