IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15860 of 2021

M/s Raghav Civcon Private Limited, company registered under provisions of the Company Act, 1956, having its registered office at Raj Kumar Ganj, P.O.-Lalbag, District-Darbhanga, through the Managing Director, Sri Vijay Raghav, Male, aged about 62 years, son of Baidyanath Thakur, residing at Raj Kumar Ganj, P.O.-Lalbag, District-Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Commissioner Commercial Taxes Department, Vikas Bhawan, Patna.
2. The Deputy Commissioner, Commercial Taxes (VAT) Darbhanga Circle at and P.O. Darbhanga Distt. Darbhanga.
3. The Joint Commissioner, Commercial Taxes (VAT) at and P.O. Darbhanga, District-Darbhanga.

... ... Respondent/s

---

with

Civil Writ Jurisdiction Case No. 15974 of 2021

M/s Raghav Construction, a Partnership Firm having Office at Raj Kumar Ganj, P.O.-Lalbag, District-darbhanga, through the Partner Sri Vijay Raghav Male,aged about 62 Years, Son of baidyanath Thakur, Residing at Raj Kumar Ganj, P.O.-Lalbag, District-Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Commissioner Commercial Taxes Department Vikas Bhawan Patna.
2. The Deputy Commissioner, Commercial Taxes (VAT) Darbhanga Circle at and P.O. Darbhanga Distt.-Darbhanga.
3. The Joint Commissioner, Commercial Taxes (VAT) at and P.O. Darbhanga District-Darbhanga.

... ... Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 15860 of 2021)

For the Petitioner/s : Mr. Jitendra Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 15974 of 2021)

For the Petitioner/s : Mr. Jitendra Kumar, Advocate

For the Respondent/s : Mr. Vivek Prasad, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-05-2023

The two writ petitions are filed by the petitioners, who were works contractors registered under the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'VAT Act'). The issue agitated in the writ petitions is with respect to the refund of excess tax paid.

2. Learned counsel for the petitioners submits that though refund is provided under Section 68 of the VAT Act read with Rule 43 of the VAT rules, an application has to be made under Form No. A-VIII, when a demand notice is issued. It is also submitted that the issuance of a demand notice for tax is possible only when there is a notice of hearing under section 25(2) in Form No. N-III. It is also argued that for filing a refund claim in Form No. AA-8 service of demand notice under Form No. A-VIII is precondition. Since Form No. A-VIII requires details of tax demanded, this having not been done the petitioner was prevented from claiming refund. Learned counsel for the petitioner also places reliance on the judgment of the Hon'ble Supreme Court in the case of **Kalyan Kumar Ray vs Commissioner Of Income Tax, West Bengal-IV, Calcutta; AIR 1992 SC 159.**

3. It is pointed out that the Hon'ble Supreme Court

found that assessment is one integrated process, which not only determines the total income but also computes the tax payable, on which the demand is raised. Computation of tax, as per the assessment order, has to be done by the Assessing Officer and in the process of assessment, the order in writing should not only indicate the total income but also the net sum which will be payable by the assessee for the assessment year in question.

4. To avoid controversies, the Hon'ble Supreme Court directed that the Department should either adopt the practice of incorporating the entire tax calculation in the assessment order or in the alternative take measures to make a demand note as Annexure to the assessment order.

5. We are afraid that the decision of the Hon'ble Supreme Court would not be applicable in the self assessment made under the VAT Act. Under the VAT Act, when a return is filed by the assessee, it is a self assessment made and unless there is a notice issued for re-assessment, the assessment is deemed to have been completed on the filing of the return. In such circumstances, no demand arises from the Department.

6. The learned State counsel also points out that here the claim is of excess tax paid even when the return was filed.

7. In C.W.J.C. No. 15860 of 2021, the returns filed

for the periods 2009-10, 2010-11 and 2011-12 are produced as Annexure-P/1. There was a disallowance of a claim of payment of wages which is seen at Annexure P/3 for the subsequent year that is 2013-14. Annexure-P/4 is a demand made for issuance of a demand notice for the purpose of filing an application under Form No. A-VIII.

8. Insofar as C.W.J.C. No. 15974 of 2021 is concerned, the petitioner filed returns for the periods 2008-09 and 2009-10, which are produced at Annexure-P/1. A demand notice was issued at Annexure- P/3, pursuant to which an application for refund was made as it seen at Annexure-P/4. A petition was also filed at Annexure-P/6 for the purpose of refund.

9. We do not think from the reading of the provisions that the demand notice is an imperative condition for the purpose of filing a refund application. Rule 43 of the VAT Rules, 2005 provides for refunds and an application is to be filed in Form No A-VIII, which requires the amount of final demand and the amount of refund claimed to be noted. Here in one writ petition there was a self assessment made and there is no further proceedings taken under Section 26 or Section 25 of VAT Act. Then necessarily he has to state the tax payable as per the returns in the column of amount of final demand and the amount of refund claimed, which could definitely be deciphered from the

returns itself, which also has the provisions to indicate the tax paid.

10. Insofar as C.W.J.C. No. 15974 of 2021 is concerned there is already a refund application.

11. The writ petitions are disposed of in the following manner:-

(i) In CWJC No. 15860 of 2021, the petitioner would be entitled to file a refund application under Form A-VIII in which circumstances the Assessing Officer will consider the same.

(ii) As far as C.W.J.C No. 15974 of 2021, suffice it to direct the consideration of the refund application already filed.

12. The writ petitions stands disposed of with the above directions.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

aditya/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.05.2023.
Transmission Date	N/A