IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12505 of 2018

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Sidhi Singh (Managing Director, Maihar Builder Pvt. Ltd.), Son of Ishwar Dayal Singh, resident of Mohalla Gandhi Nagar, P.S. - Dehri, District - Rohtas Bihar.

... ... Petitioner/s

Versus

1. The Union of India through Railway Board, Government of India, New Delhi
2. The General Manager, East Central Railway, Hazipur, Bihar.
3. The Divisional Railway Manager, Mugal Sarai (U.P.)
4. The Senior Divisional Engineer East Central Railway Mugal Sarai, Chandauli, U.P.
5. District Divisional Engineer- 3, East Central Railway, Mugalsarai, U.P.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Siddhartha Prasad, Advocate
		Mr. Ramadhar Shekhar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-01-2024

The petitioner is a works contractor who is aggrieved with the deduction of I.G.S.T. under the Goods and Services Tax regime. The petitioner submits that he had entered into a works contract and relies on Clause 7(iv) of the Conditions of Tender and Instructions to Tenderer(s) to argue that the tax under the new regime will have to be paid by the Railways and it cannot be passed on to the petitioner. It is argued that the contract was entered into in the year 2014 and the same had extended beyond the period provided, spilling over to the period after which the Goods and Services Tax regime came into force. This enables the petitioner to be absolved of the liability under the Goods and Services Tax Act. The petitioner prays that the Railways ought not to be permitted to make deductions from the bills presented for the works carried out after the Goods and Services Tax regime came into force.

2. The learned Standing Counsel for the Railways, however, submits that the petitioner cannot rely on Clause 7(iv) since tax on works contract is specifically referred to in Clause 34 of the contract. Further, the petitioner being a works Contractor, deductions have to be made from his bills which will be by the Awarder, the Railways, which will be paid over to the Government and if there is a claim for refund, the petitioner could approach the Taxes Department.

3. We have to harmonise the two clauses referred to by the contesting parties. In the Conditions of Tender and

Instructions to Tenderer(s), we find the following clause:-

> *"7(iv) **RATES TO INCLUDE ALL TAXES**: The rates quoted shall be inclusive of all taxes levied by Central or State Govt. or by any Municipal/Local or any other body. However, change of rate of statutory taxes of the State/Central Government and levy of any new type of such statutory tax shall be on Railway account."*

4. In the very same document, Clause 34 is 'Recovery of Sales Tax'. The said clause is extracted hereunder:-

> *"**RECOVERY OF SALES TAX**:*
> *For the work executed in the State of Bihar, Jharkhand and UP, Sales Tax on Works Contract will be recovered at the source from the Gross amount of each bill of the contractor as applicable. The present rate is 4% of gross work value for Bihar, Jharkhand and for U.P. present rate is 4.4% of gross work value. This is further subject to increase or decrease as per extant instructions/Act/Rules in this regard."*

5. We are inclined to find that sales tax has been carved out of the statutory taxes levied by the State or Central Government or a Municipal or Local Body, which is referred to in Clause 7(iv). Clause 34 specifically refers to the sales tax on works contract which is the tax now applicable under the Goods and Services Tax regime. It is specifically stated in Clause 34 that the deductions would be made at the rates applicable in the State of Bihar, Jharkhand and U.P. and that it would be subject to increase or decrease as per the instructions/Act/Rules in this

regard. Hence, the petitioner cannot claim that the Railways, the awarder, cannot deduct tax on works contract as leviable under the IGST Regime from the contractor, the petitioner.

6. We find absolutely no reason to entertain the writ petition and reject the same.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

P.K.P./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	16.01.2024
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