IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14995 of 2015

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1. The Home Decor
2. Vinay Kumar Son of Late Anirudh Prasad, residing in the house of Ram Ekbal Singh, House No. 5, Sita Ram Patha, West Patel Nagar, P.S.- Shastrinagar, Town and District- Patna-23. at present posted as Manager of The Home Decor at Kashi Place, Mezzamine Floor, New Dak Bunglow Road, Patna- 800001.

... ... Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Special Secretary, Building Construction Department Indian Building Contgress, Government of B
4. The Director, Monitoring-cum-Valuation-cum-Purchase cell, Building Construction Department Indian B
5. The Chief Member, Indian Building Congress, Building Construction Department, Bisheshwariya Bhavan,
6. Executive Engineer, Building Construction Department, Central Division, Near Patna High Court, Patn
7. The Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
8. The Deputy Commissioner, Commercial Taxes Department, West Circle, Government of Bihar, Patna.

... ... Respondents

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Appearance :

For the Petitioners	:	Mr. Praveen Prabhakar, Advocate
For the Respondents	:	Smt. Nivedita Nirvikar, GA-10

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL ORDER

15 15-03-2024 The writ petition is filed for seeking the following reliefs:-

> *"**(a).** Issue writ of certiorari for quashing the letter bearing no. 155, dated 13.08.2015 issued by the Director, Monitoring – cum-*

Valuation- cum – Purchase Cell, Building Construction Department (Indian Building Congress), Government of Bihar, to the extent through which even after deduction of Sales Tax, Income Tax and Cess from the bills of petitioners the payments of the same were made to the concerned departments have been denied in illegal and arbitrary manner on the alleged ground that because in the particular head there is no money and concerned account of the department has been closed, thus in these circumstances it is not possible to make payment.

(b). *Issue a further writ of certiorari for quashing the demand notice dated 23.08.2015 (Annexure – 8) issued by the Deputy Commissioner, Commercial Taxes Department to the extent through in spite of information furnished by the petitioners regarding deduction of amount of sales tax from their bills, which was lying with respondents of the Building Construction Department, the demand of the same has been made from the petitioners.*

(c). *Issue a writ of mandamus, commanding the respondents, specially respondents of the Building Construction Department, to discharge their legal obligation to deposit the amount sales tax deducted from the bill of the petitioner in regard to Value Aided Tax, Income Tax and Labour Cess to the concerned head of the concerned departments immediately along with statutory interest* *applicable for the period of delay and to provide certificate of the same to the petitioners so that they may furnish the same along with their returns to concerned departments to avoid litigations and coercive steps, if any, against them.*

(d). *Issue further writ of mandamus commanding the respondents, specially respondents of the Commercial Tax Department, to release "C Form" in the facts and circumstances of the case to the petitioners, which has been held up by their Commercial Taxes Department in illegal and arbitrary manner."*

2. The petitioner no.1 is the partnership firm having its shop at Kashi Place, New Dak Bunglow Road, Patna, represented by its Manager, Binay Kumar. The TIN VAT No. of petitioner no. 1 is 10140778089. The petitioners firm dealt with furniture in the year 2013, on the occasion of Indian Building Congress Mid-Term Session, 2013, organized by the Building Construction Department, Government of Bihar, and quotations were invited for supply of furniture. The petitioners further submits that their quotations, were accepted and on the order placed by the Building Construction Department, furniture was supplied by the petitioners under the due receipts. Further the petitioners submitted their invoice on 24.04.2013 for payment of total amount of Rs. 4,42,135/-. After scrutiny of the said

invoice, the Competent Authority made payment of Rs. 3,76,289/- after duly deducting 1% of Labour Cess i.e., Rs. 4,421/-, 2% of Income Tax i.e., Rs. 8,843 and 13.5% of VAT i.e., Rs. 52,588/-. After deductions, an assurance was made to the petitioners that after deposit of the aforementioned amount in the concerned heads, certificates will be issued to the petitioners. The calculation chart was annexed with the writ petition.

3. It is specific contention of the learned counsel for the petitioners that inspite of the repeated demands, certificates were not issued to deposit of the deducted amount under the concerned heads, for which the petitioners made an application dated 06.08.2014, to the Secretary, Building Construction Department for issuance of deposit of certificates of tax, deducted aforesaid. It is also contended by the learned counsel for the petitioners that inspite of the said application, no reply was given by the respondents for which the petitioner was constrained to make an application dated 19.12.2014 for deposit of certificates of tax deductions and the copies of the applications dated 06.08.2014 and 19.12.2014 are also annexed along with the writ petition.

4. It is further contended that the petitioners came

to know, that after the receipt of the application dated 06.08.2014, the Deputy Secretary to the Government Building Constructions Department addressed the letter dated 01.09.2014, bearing no. 9133 and had informed the Executive Engineer, Central Building Division, Patna about the supply of the furniture made by the petitioners of an amount of Rs. 4,42,135/- and also about the payment made Rs. 3,76,285/- and the remaining amount of Rs. 65,852/- its deductions under different heads were accepted by him, but he has shown his inability to make the said payments in the account as the bank account opened for Indian Building Congress was closed and it is not possible for him to deposit the said amount under the said heads. Accordingly, the application of the petitioners was forwarded to the Executive Engineer, Central Building Division, Patna, requesting him to take further action in the matter. But no action was taken by the respondents. The petitioners were constrained to issue notice to the respondents stating the facts enumerated above with a request to send the receipts or certificates of deposits made by them for the amount deducted from the bills of the petitioners. Further the Director, Purchase Cell, Building Construction Department, Bihar, Patna, vide its letter dated 13.08.2015, bearing no. 155 has replied, introducing a new thing, which was stated in the meeting dated 17.07.2013 that the payment of Rs. 3,76,283/- only was approved to be paid to the petitioners and the same was paid and the department did not deducted the amount of VAT/Income Tax / Labour Cess. Further under the heads, no amount is available in the department and that the bank account was closed. Further the petitioners have received a notice dated 01.08.2015 issued by the Deputy Commissioner, Commercial Taxes, Patna West Circle, Patna, wherein the petitioners were directed to appear before the C.T.O. Patna West Circle, Patna on 23.08.2015 along with the certificates of deductions. On 23.08.2015, a demand notice has been served against the petitioners by the Deputy Commissioner, Commercial Taxes Department with a direction to deposit a sum of Rs. 67,678/- which includes the interest on the due amount to the VAT and the department has stopped supply of “C” form to the petitioners.

5. It is specific contention of the learned counsel for the petitioners that calculation was made of the interest on the amount of VAT which comes to Rs. 13,015/- at the rate of 1.5% per month on the deducted amount of Rs. 52,588/- and for the sales tax it comes to Rs. 65,603/- payable by the respondents to the Commercial Taxes Department as the amount of VAT is for

the period of 2013-2014. It is also contended by the learned counsel for the petitioners that the petitioners have deposited rest of the amount of Rs. 2075/- which is payable by them for other consignments to the concerned departments vide *Challan* dated 09.05.2015. Therefore, it is further contended that the respondent's acts are illegal and arbitrary and the respondents are making delay in issuing the sub-deduction, inspite of the legal notice for which they are contrained to file the present writ petition. A detailed counter affidavit has been filed by the respondent no. 6.

6. It is specific contention of the learned counsel for the respondent that after supply of the furniture by the petitioners, as per the invoice dated 24.04.2013 a total amount is of Rs. 4,42,135/- and after scrutiny of the invoice, the Building Construction Department made payment of Rs. 3,76,283 after deducting 1% of Labour Cess i.e., Rs. 4,421, 2% Income Tax i.e., Rs. 8,843/- and 13.5% of VAT i.e., Rs. 52,588/-.

7. It is specific contention of the learned counsel for the respondents that the aforesaid calculation was made by the authority, on the back of the invoice itself and, thereafter, on 06.08.2014, petitioners sent an application for issuance of certificate of deduction with regard to VAT Income Tax etc. on

01.09.2014 which was sent by the Deputy Secretary to the Government Building Construction Department, who in turn informed the Executive Engineer, Central Building Division, Patna to take action on the said application of the petitioners. But no action was taken for payment by the authority concerned, on the ground that as the Bank Account was closed, hence, it is not possible to make payment under the head.

8. It is specific contention that as per the payments made to the petitioners, it is evident that the taxes were deducted and it is bounded duty on the respondents concerned to deposit the deducted taxes to the concerned heads of the concerned departments and the petitioners cannot be once again claimed for non-deposit of the tax by the respondents.

9. Heard the rival contentions of the learned counsel for the petitioner as well as learned counsel for the respondents.

10. The records disclose that the petitioners have received only an amount of Rs. 3,76,283/- after deducting 1% of Labour Cess, 2% of Income Tax and 13.5% of VAT. Therefore, the petitioners are entitled for the certificates from the Building Construction Department or else the Building Construction Department can direct to deposit the said amount deducted by

them to the Labour Cess, Income Tax as well as VAT as the money was kept lying along with Building Construction Department VAT can not further impose/claim for non-payment as petitioner amount was deducted for the concerned heads. It is for the Government to pay the amounts to concerned department once they are deducted from the amounts of the petitioner. Therefore, the respondent nos. 2, 3, 4 and 6 (Building Construction Department) are directed to issue the certificates of deductions to the petitioners within a period of three months from the date of disposal of this writ petition. If at all the petitioner has paid the amounts to the concerned department, he is entitled for the said amount as they were deducted from the petitioner.

11. With the above observation, the writ petition stands disposed of.

(G. Anupama Chakravarthy, J)

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