IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8595 of 2021

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1. M/s Akash Auto Planet, Mahindra Authorized Service Centre, Station Road, Near Rest House, District- Jamui
2. The Proprietor M/s Akash Auto Planet, Mr. Santosh Kumar aged about 52 years, Male, Son of Late Satyadeo Prasad Singh, Resident of Village and Post - Kharsari, P.S. and District - Jamui

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Superintending Engineer, Road Construction Department, East Road Construction Circle, Bhagalpur.
4. The Executive Engineer, Road Construction Department, Road Division, Jamui

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chakrapani, Advocate
Mr. Dipak Kumar, Advocate

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-10-2024

The petitioner by the above writ petition claims disbursement of the service tax component of Rs. 15,01,787.92 at the rate of 12.36%, on the Bill of Quantities (for brevity ‘BOQ’), for reason of there being no liability to service tax; the work carried out being supply and erection of a steel foot over bridge at Katchechari Chowk on turnkey basis under the MPLAD scheme.

2. Admittedly, as per notification No. 12 of 2012-Service Tax dated 17.03.2012, the work carried out by the petitioner is exempted from the levy of service tax being a service provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of a road, bridge, tunnel or terminal for road transportation for use by general public.

3. We have heard learned Counsel, Shri Chakrapani for the appellant and learned Counsel, Shri Vikash Kumar for respondent-State.

4. The learned Counsel for the petitioner argued that the claim was raised specifically based on the judgment at Annexure-4 in a batch of writ petitions. The petitioner had approached this Court for a similar relief which was considered and allowed in Annexure-5 judgment. The impugned order at Annexure-6 rejected the claim on the ground that the entire

payments as per the BOQ was made to the petitioner which came to Rs. 1,21,50,387.68/-.

5. The learned Government Advocate as a preliminary issue raised the question of delay in filing the writ petition; which was responded to by the learned Counsel for the petitioner pointing out the extension of limitation as granted by Hon'ble Supreme Court during the Covid period. We accept the contention of the respondent that there could be no ground of delay alleged against the petitioner since the period between the issuance of the order and the filing of the writ petition stood extended by the Hon'ble Supreme Court.

6. It is also submitted by the learned Government Advocate that the subject agreement clearly indicated the BOQ and the tax payable. Only if the liability arise and the tax was payable by the contractor, could the awarder be mulcted with the liability.

7. The contract for works as entered into by the petitioner and the respondent is produced along with the impugned order. It clearly indicates that the total BOQ was Rs. 1,21,50,387.68 and the Central Sales Tax, Service Tax and labour cess were separately indicated.

8. In Annexure-4 judgment, the question raised was

with respect to the refund of service tax at the rate of 12.36% which was deducted from the bills submitted by the contractors; when the specific agreement indicated the Estimated Cost Value (ECV) for the different works having been prepared after including service tax. It was also the submission of the awarder in the said case that by reason of such agreement the service tax at the rate of 12.36 % was included in the cost of work and was being deducted from the bills of the petitioner. It is only on the deduction having been made for the purpose of service tax that refund was ordered; which does not have any application to the present case.

9. In the present case, the agreement itself indicated the BOQ and the tax liability separately. When the service tax liability does not arise, there is no question of the petitioner having to pay such amounts; which would not be deducted from the bills. The bill were submitted for the BOQ which has been paid up by the awarder. Merely because service tax was shown separately as the liability of the petitioner, there cannot be any claim for payment of such quantum indicated separately; to the petitioner as consideration for the supply and installation work carried out. The tax liability ultimately is of the awarder and when the agreement indicated the BOQ and tax separately; if tax

is exempted, the contractor cannot raise a claim for the same; which if allowed would be an unjust enrichment in the context of the exemption.

10. We find absolutely no reason to entertain the writ petition and uphold the impugned order.

11. The writ petition stands rejected.

(K. Vinod Chandran, CJ)

Partha Sarthy, J I agree

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	22.10.2024
Uploading Date	26 .10.2024
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